ORIGINAL

HC97

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 1612/2024
and
194 other case numbers listed in Annexure "A" to the Notice of Motion

In the matters between:

HERMAN BESTER N.O.	First Applicant
ADRIAAN WILLEM VAN ROOYEN N.O.	Second Applicant
CHRISTOPHER JAMES ROOS N.O.	Third Applicant
JACOLIEN FRIEDA BARNARD N.O.	Fourth Applicant
DEIDRE BASSON N.O.	Fifth Applicant
CHAVONNES BADENHORST ST CLAIR COOPER N.O.	Sixth Applicant
KEVIN TITUS N.O.	Seventh Applicant
DANIEL SANDILE NDLOVU N.O.	Eighth Applicant

(Cited in their capacities as the joint liquidators of
MIRROR TRADING INTERNATIONAL (PTY) LTD
(in liquidation))

And

ANMARIE BARNARD	First Respondent
And the other 194 parties named in items 2-195 in Annexure "**A**" to the Notice of Motion	2nd - 195th Respondents

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NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of the

MOSTERT & BOSMAN
PER: PIERRE DU TOIT
TELNR: 021-914-3322
E-MAIL: pierred@mbalaw.co.za; antoinettee@mbalaw.co.za

abovementioned Applicants for an order in the following terms:

1. That the actions instituted in this Court under the case numbers reflected in annexure "**A**" to this Notice of Motion, be consolidated in terms of the provisions of Uniform Rule 11 and that the consolidated matter henceforth be conducted under case number 1612/2024;

2. That leave is granted to the applicants to approach this Court on the papers in this matter, duly supplemented where necessary, in order to seek a further consolidation order in respect of additional matters that may be identified as suitable to be consolidated with the pending actions to which this order relates;

3. That the costs of this application, if unopposed, shall be costs in the consolidated matter, alternatively, that the costs of this application shall be paid by any party who opposes this application as per scale "C", such costs to include the costs consequent upon the employment of two counsel where so employed;

4. That such further and/or alternative relief be granted as this Honourable Court may deem necessary.

TAKE NOTICE FURTHER THAT the founding affidavit of **HERMAN BESTER** and the confirmatory affidavits of the **SECOND TO EIGHTH APPLICANTS** and **PIERRE DU TOIT** annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicants have appointed the offices of their attorneys of record set out hereunder as the address at which they will accept notice and service of all documents and processes in these proceedings.

TAKE NOTICE FURTHER THAT the Applicants hereby consent to service of all further documents and/or pleadings and/or notices and/or all correspondence by electronic mail in terms of Rule 4A(1)(c) of the Uniform Rules of Court at e-mails: pierred@mbalaw.co.za and antoinettee@mbalaw.co.za.

TAKE NOTICE FURTHER THAT if any of the Respondents intend opposing this application, such Respondents are required:

(a) to notify the Applicants' attorneys in writing on or before **TUESDAY, 10 DECEMBER 2024**; and

(b) within fifteen (15) days after notice to oppose was given, to file an answering affidavit(s), if any.

If no such notice of intention to oppose be given, the application will be made on **WEDNESDAY, 29 JANUARY 2025** at **10h00,** or so soon thereafter as counsel for the Applicants may be heard.

DATED AT **BELLVILLE** ON THIS **25th** DAY OF **NOVEMBER 2024.**

MOSTERT & BOSMAN

PER: PIERRE DU TOIT

Attorney for Applicants

Fourth Floor, Madison Square

c/o Carl Cronje & Tygerfalls Boulevard

Tygervalley, **BELLVILLE**

(Ref: P DU TOIT / AE)

TO: THE REGISTRAR

High Court

CAPE TOWN **BY HAND**

AND

TO: LISTER & CO

Attorneys for Respondents

Office Suite 2, Gate 4

Marwick Clocktower Building

1 Lucas Drive

Hillcrest

KWAZULU-NATAL

Ref: Mr JA Lister

E-mail: john@listerco.co.za &

admin@listerco.co.za **BY E-MAIL**

"A"

MATTERS WHERE PLEAS HAVE BEEN FILED

MOSTERT & BOSMAN ATTORNEYS

No.	REF	Defendant Initials	Defendant Surname	Jurisdiction	Case No.	Plea Dated	Plea Type
1	WJ4599	A	BARNARD	WESTERN CAPE	1612/24	4 AUGUST 2024	Lis pendens; Section 32
2	WJ4685	VH	BARTLETT	WESTERN CAPE	20877/2023	4 AUGUST 2024	Lis pendens; Section 32
3	WJ1574	I	BELL	WESTERN CAPE	14025/22	31 AUGUST 2022	Lis pendens
4	WJ2038	PJL	BIERMAN	WESTERN CAPE	14603/2022	24 OCTOBER 2022	Lis pendens
5	WJ1550	N	BOSHOFF	WESTERN CAPE	5921/22	18 JULY 2022	Lis pendens
6	WJ2577	WH	BOSHOFF	WESTERN CAPE	9344/2024	2 AUGUST 2024	Lis pendens; Section 32
7	WJ6380	MDM	BRAAF	WESTERN CAPE	6989/2024	23 JULY 2024	Lis pendens; Section 32
8	WJ2056	C	BREDELL	WESTERN CAPE	15316/22	23 JULY 2024	Lis pendens; Section 32
9	WJ5317	JT	BREEDT	WESTERN CAPE	1821/24	24 JULY 2024	Lis pendens; Section 32
10	WJ5195	SJJ	BREEK	WESTERN CAPE	1497/24	6 SEPTEMBER 2024	Lis pendens; Section 32
11	WJ4508	GC	COMBRINK	WESTERN CAPE	20874/2023	2 AUGUST 2024	Lis pendens; Section 32
12	WJ4995	P	DE BOD	WESTERN CAPE	1879/2024	2 AUGUST 2024	Lis pendens; Section 32
13	WJ2027	KP	DE JAGER	WESTERN CAPE	14948/2022	1 AUGUST 2024	Lis pendens
14	WJ2024	L	DE JAGER	WESTERN CAPE	15324/2022	7 DECEMBER 2024	Lis pendens
15	WJ1550	N	DE JONG BOSHOFF	WESTERN CAPE	5921/22	18 JULY 2022	Lis pendens
16	WJ4961	P	DE VOS VILJOEN	WESTERN CAPE	1832/2024	7 AUGUST 2024	Lis pendens; Section 32
17	WJ4531	MA	DE VRIES	WESTERN CAPE	6711/24	2 AUGUST 2024	Lis pendens; Section 32
18	WJ2028	VG	DONALD	WESTERN CAPE	14602/22	7 OCTOBER 2022	Lis pendens
19	WJ4872	M	DU PREEZ	WESTERN CAPE	4429/2024	1 AUGUST 2024	Lis pendens; Section 32
20	WJ6156	E	DU RAND	WESTERN CAPE	7124/2024	18 SEPTEMBER 2024	Prescription; Section 32
21	WJ2404	E	FERREIRA	WESTERN CAPE	7757/2024	10 AUGUST 2024	Lis pendens; Section 32
22	WJ4910	AS	HAYES	WESTERN CAPE	1800/24	2 AUGUST 2024	Lis pendens; Section 32
23	WJ2031	S	JANSEN VAN VUUREN	WESTERN CAPE	15323/2022	1 AUGUST 2024	Lis pendens
24	WJ4535	SY	JHAVARY	WESTERN CAPE	10134/24	14 AUGUST 2024	Lis pendens; Section 32
25	WJ5278	HF	KELLERMAN	WESTERN CAPE	2263/24	1 AUGUST 2024	Lis pendens; Section 32
26	WJ2042	CT	KEUZENKAMP	WESTERN CAPE	14947/22	24 OCTOBER 2022	Lis pendens
27	WJ6063	CFN	KOEGELENBERG	WESTERN CAPE	3916/2024	14 AUGUST 2024	Lis pendens; Section 32
28	WJ6102	I	LABUSCHAGNE	WESTERN CAPE	3927/24	1 AUGUST 2024	Lis pendens; Section 32
29	WJ4963	M	LAUBSCHER	WESTERN CAPE	2267/2024	2 AUGUST 2024	Lis pendens; Section 32
30	WJ5082	SA	MANUEL	WESTERN CAPE	1733/24	1 AUGUST 2024	Lis pendens; Section 32
31	WJ2052	DC	MEIRING	WESTERN CAPE	15312/2022	24 OCTOBER 2022	Lis pendens
32	WJ2570	G	MINNIE	WESTERN CAPE	7762/2024	1 AUGUST 2024	Lis pendens; Section 32
33	WJ1611	N	MOELICH	WESTERN CAPE	13977/2022	1 AUGUST 2024	Lis pendens
34	WJ2067	GB	MYBURGH	WESTERN CAPE	15322/2022	28 FEBRUARY 2023	Lis pendens
35	WJ5251	MM	NIEUWOUDT	WESTERN CAPE	1730/24	2 AUGUST 2024	Lis pendens; Section 32
36	WJ6312	JC	OLIVIER	WESTERN CAPE	3738/2024	1 AUGUST 2024	Lis pendens; Section 32
37	WJ2413	EP	SMIT	WESTERN CAPE	14045/23	2 AUGUST 2024	Lis pendens; Section 32
38	WJ5204	KG	STEMMET	WESTERN CAPE	7011/2024	17 AUGUST 2024	Lis pendens; Section 32
39	WJ4769	DE	TURNER	WESTERN CAPE	4428/24	2 AUGUST 2024	Lis pendens; Section 32
40	WJ1570	NJ	VAN DER MERWE	WESTERN CAPE	5920/2022	18 JULY 2022	Lis pendens
41	WJ6349	DT	VAN DER MESCHT	WESTERN CAPE	7123/24	1 AUGUST 2024	Lis pendens; Section 32
42	WJ4693	JE	VAN NIEKERK	WESTERN CAPE	20879/2023	2 AUGUST 2024	Lis pendens; Section 32
43	WJ5151	K	VAN ROOYEN	WESTERN CAPE	1611/24	31 JULY 2024	Lis pendens; Section 32
44	WJ2049	GD	VAN ZYL	WESTERN CAPE	16376/2022	22 FEBRUARY 2024	Lis pendens
45	WJ5020	AJH	VENTER	WESTERN CAPE	7010/2024	4 AUGUST 2024	Lis pendens; Section 32
46	WJ4630	NJ	VLOK	WESTERN CAPE	6839/24	6 SEPTEMBER 2024	Lis pendens; Section 32
47	WJ4488	MH	VORSTER	WESTERN CAPE	1577/2024	6 AUGUST 2024	Lis pendens; Section 32
48	WJ6115	PJ	WILLIAMSON	WESTERN CAPE	3926/24	8 AUGUST 2024	Lis pendens; Section 32

ENDERSTEIN MALUMBETE INC

49	MTI0039	B	BARROW	WESTERN CAPE	22250/2023	23 JULY 2024	Lis pendens; Section 32
50	MTI0062	P	BODDE	WESTERN CAPE	8473/2024	9 SEPTEMBER 2024	Prescription; Section 32
51	MTI0071	H	BOSHOFF	WESTERN CAPE	6556/2024	24 JULY 2024	Lis pendens; Section 32
52	MTI0084	S	BOTHA	WESTERN CAPE	887/2024	23 JULY 2024	Lis pendens; Section 32
53	MTI1004	M	BRITS	WESTERN CAPE	10104/2024	24 JULY 2024	Lis pendens; Section 32
54	MTI0116	M	BURGER	WESTERN CAPE	20420/2024	24 JULY 2024	Lis pendens; Section 32
55	MTI0133	M	CHRISTIE	WESTERN CAPE	22869/2023	1 AUGUST 2024	Lis pendens; Section 32
56	MTI0136	G	CLOETE	WESTERN CAPE	10425/2024	31 JULY 2024	Lis pendens; Section 32

No.	REF	Defendant Initials	Defendant Surname	Jurisdiction	Case No.	Plea Dated	Plea Type
57	MTI0149	A	CORREIA	WESTERN CAPE	7681/2024	1 AUGUST 2024	Lis pendens; Section 32
58	MTI0165	P	DE JAGER	WESTERN CAPE	748/2024	1 AUGUST 2024	Lis pendens; Section 32
59	MTI0177	C	DERCKSEN	WESTERN CAPE	7061/2024	30 JULY 2024	Lis pendens; Section 32
60	MTI0187	A	DONOVAN	WESTERN CAPE	10856/2024	10 AUGUST 2024	Lis pendens; Section 32
61	MTI0207	J	DU PREEZ	WESTERN CAPE	7691/2024	25 JULY 2024	Lis pendens; Section 32
62	MTI0205	P	DU PREEZ	WESTERN CAPE	20671/2023	31 JULY 2024	Lis pendens; Section 32
63	MTI0221	V	ELLERBECK	WESTERN CAPE	22247/2023	1 AUGUST 2024	Lis pendens; Section 32
64	MTI0246	M	FLOOD	WESTERN CAPE	10904/2024	10 SEPTEMBER 2024	Lis pendens; Section 32
65	MTI0266	G	GOW	WESTERN CAPE	20418/2023	1 AUGUST 2024	Lis pendens; Section 32
66	MTI0272	K	GROBBELAAR	WESTERN CAPE	10938/2024	30 JULY 2024	Lis pendens; Section 32
67	MTI0310	M	HEYDENRICH	WESTERN CAPE	4778/2024	14 AUGUST 2024	Lis pendens; Section 32
68	MTI0334	L	JANSE VAN RENSBURG	WESTERN CAPE	10900/2024	1 AUGUST 2024	Lis pendens; Section 32
69	MTI0380	M	KOTZEE	WESTERN CAPE	1225/2024	31 JULY 2024	Lis pendens; Section 32
70	MTI0387	S	KRUGER	WESTERN CAPE	20935/2023	1 AUGUST 2024	Lis pendens; Section 32
71	MTI0392	J	KUHN	WESTERN CAPE	11012/2024	11 SEPTEMBER 2024	Lis pendens; Section 32
72	MTI0397	MFB	LADOSZ	WESTERN CAPE	22874/2023	31 JULY 2024	Lis pendens; Section 32
73	MTI0398	J	LADOSZ	WESTERN CAPE	10948/2024	23 JULY 2024	Lis pendens; Section 32
74	MTI0429	F	LOUW	WESTERN CAPE	22538/2023	1 AUGUST 2024	Lis pendens; Section 32
75	MTI0436	M	MADEIRA	WESTERN CAPE	892/2024	31 JULY 2024	Lis pendens; Section 32
76	MTI0441	R	MALAN	WESTERN CAPE	4085/2024	27 AUGUST 2024	Lis pendens; Section 32
77	MTI0457	D	MARSHALL	WESTERN CAPE	5965/2024	19 SEPTEMBER 2024	Lis pendens; Section 32
78	MTI0619	R	MORGAN	WESTERN CAPE	10080/2024	30 JULY 2024	Lis pendens; Section 32
79	MTI0536	M	ODENDAAL	WESTERN CAPE	8480/2024	10 SEPTEMBER 2024	Lis pendens; Section 32
80	MTI0541	P	OLIVIER	WESTERN CAPE	10879/2024	1 AUGUST 2024	Lis pendens; Section 32
81	MTI0551	M	OOSTHUIZEN	WESTERN CAPE	10647/2024	1 AUGUST 2024	Lis pendens; Section 32
82	MTI0814	J	POTGIETER	WESTERN CAPE	68/2024	1 AUGUST 2024	Lis pendens; Section 32
83	MTI0666	C	RHODE	WESTERN CAPE	20665/2023	30 JULY 2024	Lis pendens; Section 32
84	MTI0615	C	ROLFE	WESTERN CAPE	22539/2023	30 JULY 2024	Lis pendens; Section 32
85	MTI0623	H	ROSSOUW	WESTERN CAPE	892/2024	31 JULY 2024	Lis pendens; Section 32
86	MTI0674	M	SMIT	WESTERN CAPE	8704/2024	19 SEPTEMBER 2024	Lis pendens; Section 32
87	MTI0701	B	STEENHUISEN	WESTERN CAPE	2184/2024	10 AUGUST 2024	Lis pendens; Section 32
88	MTI0740	L	TROSKIE	WESTERN CAPE	22866/2023	31 JULY 2024	Lis pendens; Section 32
89	MTI0754	W	VAN AMSTEL	WESTERN CAPE	4787/2024	6 SEPTEMBER 2024	Lis pendens; Section 32
90	MTI0777	W	VAN DER WALT	WESTERN CAPE	10897/2024	1 AUGUST 2024	Lis pendens; Section 32
91	MTI0783	F	VAN DYK	WESTERN CAPE	22671/2023	10 AUGUST 2024	Lis pendens; Section 32
92	MTI0797	C	VAN NIEKERK	WESTERN CAPE	22245/2023	26 JULY 2024	Lis pendens; Section 32
93	MTI0803	K	VAN ROOYEN	WESTERN CAPE	1224/2024	1 AUGUST 2024	Lis pendens; Section 32
94	MTI0847	W	VORSTER	WESTERN CAPE	5398/2024	8 AUGUST 2024	Lis pendens; Section 32
95	MTI0846	G	VORSTER	WESTERN CAPE	5401/2024	6 AUGUST 2024	Lis pendens; Section 32
96	MTI0856	A	WENTZEL	WESTERN CAPE	21235/2023	8 AUGUST 2024	Lis pendens; Section 32
97	MTI0887	X	ZHANG	WESTERN CAPE	22672/2023	8 AUGUST 2024	Lis pendens; Section 32

STRYDOM RABIE INC

98	MTI4/0454	C	BALLIE	WESTERN CAPE	2258/2024	28-Jul-24	Lis Pendens, Section 32
99	MTI4/0202	DH	BATES	WESTERN CAPE	6328/2024	14-Aug-24	Lis Pendens, Section 32
100	MTI4/0217	H	BAUMGARTEN	WESTERN CAPE	6029/2024	24-Jul-24	Lis Pendens, Section 32
101	MTI2/0139	S	BERGMANN	WESTERN CAPE	12732/2024	09-Oct-24	Presciption, Section 32
102	MTI4/0416	R	BERNER	WESTERN CAPE	2974/2024	24-Jul-24	Lis Pendens, Section 32
103	MTI4/0309	GC	BIRCH	WESTERN CAPE	5965/2024	30-Sep-24	Lis Pendens, Section 32
104	MTI4/0744	L	BLOOM	WESTERN CAPE	6097/2024	26-Jul-24	Lis Pendens, Section 32
105	MTI4/0496	H	BOTHA	WESTERN CAPE	2980/2024	24-Jul-24	Lis Pendens, Section 32
106	MTI4/0610	H	COOK	WESTERN CAPE	5252/2024	28-Jul-24	Lis Pendens, Section 32
107	MTI4/0076	M	DIETSTEIN	WESTERN CAPE	2551/24	26-Jul-24	Lis Pendens, Section 32
108	MTI4/0113	SP	DONALD	WESTERN CAPE	6353/2024	26-Jul-24	Lis Pendens, Section 32
109	MTI4/0050	ML	EATON	WESTERN CAPE	3092/2024	29-Jul-24	Lis Pendens, Section 32
110	MTI2/0147	WA	HAUPT	WESTERN CAPE	8675/2024	09-Sep-24	Presciption, Section 32
111	MTI4/0099	R	HOARE	WESTERN CAPE	2447/2024	29-Jul-24	Lis Pendens, Section 32
112	MTI4/0254	RT	HOLLENBERG	WESTERN CAPE	6079/2024	24-Jul-24	Lis Pendens, Section 32
113	MTI2/0235	RE	HOSKING	WESTERN CAPE	631/24	29-Jul-24	Lis Pendens, Section 32
114	MTI4/0611	DJ	HOUGH	WESTERN CAPE	5258/2024	28-Jul-24	Lis Pendens, Section 32
115	MTI4/0579	AI	KLEIN-WERNER	WESTERN CAPE	6093/24	26-Jul-24	Lis Pendens, Section 32
116	MTI4/0276	KOR	KOOPMAN	WESTERN CAPE	6089/2024	29-Jul-24	Lis Pendens, Section 32
117	MTI4/0601	CJ	LOCHNER	WESTERN CAPE	5256/2024	28-Jul-24	Lis Pendens, Section 32
118	MTI4/0364	DP	MARAIS	WESTERN CAPE	1391/2024	29-Jul-24	Lis Pendens, Section 32
119	MTI4/0546	O	MARTIN	WESTERN CAPE	2984/2024	29-Jul-24	Lis Pendens, Section 32
120	MTI4/0301	NR	MITCHELL	WESTERN CAPE	20784/23	06-Aug-24	Lis Pendens, Section 32

No.	REF	Defendant Initials	Defendant Surname	Jurisdiction	Case No.	Plea Dated	Plea Type
121	MTI4/0333	E	MULLER	WESTERN CAPE	1609/24	28-Jul-24	Lis Pendens, Section 32
122	MTI4/0306	JA	NEL	WESTERN CAPE	9773/2024	19-Sep-24	Lis Pendens, Section 32
123	MTI4/0585	CA	NEL	WESTERN CAPE	5092/24	26-Jul-24	Lis Pendens, Section 32
124	MTI2/0399	WJ	NORTJE	WESTERN CAPE	13707/23	29-Jul-24	Lis Pendens, Section 32
125	MTI4/0263	S	REPENSEK	WESTERN CAPE	6080/2024	24-Jul-24	Lis Pendens, Section 32
126	MTI4/0488	J	SAUNDERS-PERRIN	WESTERN CAPE	802/2024	26th Sep 2024	Lis Pendens, Section 32
127	MTI4/0033	MK	SHAMSI	WESTERN CAPE	6214/2024	28-Jul-24	Lis Pendens, Section 32
128	MTI4/0629	AP	SMOOK	WESTERN CAPE	4954/2024	28-Jul-24	Lis Pendens, Section 32
129	MTI4/0441	A	STRYDOM	WESTERN CAPE	3168/24	30-Jul-24	Lis Pendens, Section 32
130	MTI4/0341	M	THOMAS	WESTERN CAPE	1870/2024	28-Jul-24	Lis Pendens, Section 32
131	MTI4/0517	E	VAN DER MERWE	WESTERN CAPE	2949/2024	13-Aug-24	Lis Pendens, Section 32
132	MTI4/0927	JP	VAN DER MERWE	WESTERN CAPE	3594/2023	12-Aug-24	Lis Pendens, Section 32
133	MTI2/0294	D	VAN DER MERWE	WESTERN CAPE	639/2024	26-Jul-24	Lis Pendens, Section 32
134	MTI4/0540	ME	VAN DYK	WESTERN CAPE	10544/24	28-Jul-24	Lis Pendens, Section 32
135	MTI4/0429	AT	VAN HEERDEN	WESTERN CAPE	2925/2024	04-Aug-24	Lis Pendens, Section 32
136	MTI482	RA	VAN WYK	WESTERN CAPE	2987/2024	10-Aug-24	Lis Pendens, Section 32
137	MTI4/0424	TA	VENTER	WESTERN CAPE	3389/2024	28-Jul-24	Lis Pendens, Section 32
138	MTI4/0433	L	VIVIERS	WESTERN CAPE	10383/24	10-Aug-24	Lis Pendens, Section 32
139	MTI4/0753	RC	VORSTER	WESTERN CAPE	6077/24	02-Aug-24	Lis Pendens, Section 32
140	MTI4/0539	M	WALSH	WESTERN CAPE	3091/2024	12-Aug-24	Lis Pendens, Section 32

VEZI & DE BEER INC

141	MAT86905	HL	ARENDSE	WESTERN CAPE	7093/2024	04-Aug	Lis pendens; Section 32
142	MAT85466	H	BEUKES	WESTERN CAPE	3198/24	04-Aug	Lis pendens; Section 32
143	MAT84128	F	BRITS	WESTERN CAPE	21796/23	06-Aug	Lis pendens; Section 32
144	MAT85464	J	BRONKHORST	WESTERN CAPE	3200/24	14-Aug	Lis pendens; Section 32
145	MAT86911	L	CLAASSEN	WESTERN CAPE	7190/2024	04-Aug	Lis pendens; Section 32
146	MAT86855	N	COETZEE	WESTERN CAPE	6846/24	31-Jul	Lis pendens; Section 32
147	MAT84333	L	EDGE	WESTERN CAPE	22692/23	14-Aug	Lis pendens; Section 32
148	MAT86936	PJ	FRANCOIS	WESTERN CAPE	6500/24	05-Aug	Lis pendens; Section 32
149	MAT85536	N	GOWUS	WESTERN CAPE	3724/2024	05-Aug	Lis pendens; Section 32
150	MAT84115	L	HILLERMAN	WESTERN CAPE	21800/23	05-Aug	Lis pendens; Section 32
151	MAT86959	CM	HOFFMAN	WESTERN CAPE	6649/2024	09-Sep	Prescription
152	MAT86977	H	HOLM	WESTERN CAPE	7580/24	19-Sep	Lis pendens; Section 32
153	MAT86981	M	JOUBERT	WESTERN CAPE	7579/2024	04-Aug	Lis pendens; Section 32
154	MAT85521	W	MARAIS	WESTERN CAPE	3630/24	04-Aug	Lis pendens; Section 32
155	MAT86967	NJ	MUZIK	WESTERN CAPE	7629/24	14-Aug	Lis pendens; Section 32
156	MAT85530	AM	OOSTHUIZEN	WESTERN CAPE	3628/24	06-Sep	Lis pendens; Section 32
157	MAT86860	J	SNELL	WESTERN CAPE	6857/2024	14-Aug	Lis pendens; Section 32
158	MAT86971	EA	VAN DER MERWE	WESTERN CAPE	7578/2024	05-Aug	Lis pendens; Section 32
159	MAT87040	J	VAN DER MERWE	WESTERN CAPE	6643/2024	24-Jul	Lis pendens; Section 32
160	MAT86853	O	VAN DER SPUY	WESTERN CAPE	6853/2024	06-Aug	Lis pendens; Section 32
161	MAT85489	H	VAN NIEKERK	WESTERN CAPE	3326/2024	06-Aug	Lis pendens; Section 32
162	MAT84252	J	WEBER	WESTERN CAPE	22343/23	08-Aug	Lis pendens; Section 32
163	MAT86867	D	WESSELS	WESTERN CAPE	6955/24	05-Aug	Lis pendens; Section 32

YVETTE CLOETE & ASSOCIATES

164	13952402	J	BEKKER	WESTERN CAPE	9513/2024	23 JULY 2024	Lis pendens; Section 32
165	2865593	R	BRIGDEN	WESTERN CAPE	21354/2023	14 AUGUST 2024	Lis pendens; Section 32
166	1684299	D	DU TOIT	WESTERN CAPE	22371/2023	4 AUGUST 2024	Lis pendens; Section 32
167	1971856	R	ELLIOT	WESTERN CAPE	10025/2024	4 AUGUST 2024	Lis pendens; Section 32
168	2012265	E	HENDRIKSZ	WESTERN CAPE	20591/2023	4 AUGUST 2024	Lis pendens; Section 32
169	1325140	I	KAPP	WESTERN CAPE	7910/2024	4 AUGUST 2024	Lis pendens; Section 32
170	2094631	T	MELANE	WESTERN CAPE	1305/2024	6 AUGUST 2024	Lis pendens; Section 32
171	7843593	A	MYBURGH	WESTERN CAPE	22365/2023	6 AUGUST 2024	Lis pendens; Section 32
172	8408800	A	NEL	WESTERN CAPE	22372/2023	10 AUGUST 2024	Lis pendens; Section 32

DEFENDED MATTERS WHERE NO PLEA HAS BEEN FILED

MOSTERT & BOSMAN ATTORNEYS

No.	REF	Defendant Initials	Defendant Surname	Jurisdiction	Case No.	Plea Dated	Plea Type
173	WJ4866	D	BADENHORST	WESTERN CAPE	20993/2023	N/A	N/A
174	WJ5014	R	FERREIRA	WESTERN CAPE	20992/2023	N/A	N/A
175	WJ5344	AS	HAMANN	WESTERN CAPE	1729/2024	N/A	N/A
176	WJ6031	DJ	HANEKOM	WESTERN CAPE	7003/2024	N/A	N/A
177	WJ2548	R	HENWICK	WESTERN CAPE	17953/23	N/A	N/A
178	WJ5033	D	KOEGELENBERG	WESTERN CAPE	1838/2024	N/A	N/A
179	WJ5036	M	VAN DER WALT	WESTERN CAPE	1835/2024	N/A	N/A
180	WJ2408	FAC	VENTER	WESTERN CAPE	17662/23	N/A	N/A

ENDERSTEIN MALUMBETE INC

181	MTI0007	M	ADAIMI	WESTERN CAPE	22537/2023	N/A	N/A
182	MTI0114	A	BULLOCK	WESTERN CAPE	10842/2024	N/A	N/A
183	MTI0274	R	GROBLER	WESTERN CAPE	20419/2023	N/A	N/A
184	MTI0870	L	HEMMES	WESTERN CAPE	6557/2024	N/A	N/A
185	MTI0337	S	JANSE VAN RENSBURG	WESTERN CAPE	10449/2023	N/A	N/A
186	MTI0574	K	WILLIAMSON	WESTERN CAPE	10818/2024	N/A	N/A

STRYDOM RABIE INC

187	MTI4/0553	E	Botha	WESTERN CAPE	2948/2024	N/A	N/A
188	MTI2/0444	PE	Koziel	WESTERN CAPE	12503/2024	N/A	N/A
189	MTI4/0617	LD	Paterson	WESTERN CAPE	20418/24	N/A	N/A
190	MTI4/0468	A	Ranzani	WESTERN CAPE	2444/2024	N/A	N/A
191	MTI4/0587	GJ	Venter	WESTERN CAPE	6027/2024	N/A	N/A

VEZI & DE BEER INC

192	MAT85527	E	DEHAAN	WESTERN CAPE	3626/24	N/A	N/A
193	MAT86951	TR	SWART	WESTERN CAPE	6507/2024	N/A	N/A
194	MAT86875	J	WINDT	WESTERN CAPE	6963/2024	N/A	N/A

YVETTE CLOETE & ASSOCIATES

195	6348396	W	BRESLER	WESTERN CAPE	1264/2024	N/A	N/A

HC97

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 1612/2024
and
194 other case numbers listed in Annexure "A" to the Notice of Motion

In the matters between:

HERMAN BESTER N.O.	First Applicant
ADRIAAN WILLEM VAN ROOYEN N.O.	Second Applicant
CHRISTOPHER JAMES ROOS N.O.	Third Applicant
JACOLIEN FRIEDA BARNARD N.O.	Fourth Applicant
DEIDRE BASSON N.O.	Fifth Applicant
CHAVONNES BADENHORST ST CLAIR COOPER N.O.	Sixth Applicant
KEVIN TITUS N.O.	Seventh Applicant
DANIEL SANDILE NDLOVU N.O.	Eighth Applicant

(Cited in their capacities as the joint liquidators of
MIRROR TRADING INTERNATIONAL (PTY) LTD
(in liquidation))

And

ANMARIE BARNARD	First Respondent
And the other 194 parties named in items 2-195 in Annexure **"A"** to the Notice of Motion	2nd - 195th Respondents

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FOUNDING AFFIDAVIT

I, the undersigned

HERMAN BESTER

do hereby make oath and say that:

1. I am an insolvency- and business rescue practitioner, practising as such at Tygerberg Trustees, situated at First Floor, Cascade Terraces, Waterfront Road, Tyger Waterfront, Tygervalley, Bellville, Western Cape.

2. The facts deposed to herein are within my personal knowledge and belief, save where the context indicates otherwise and are, to the best of my belief, true and correct.

THE APPLICANTS

3. I am the First Applicant in this application, cited in my capacity as duly appointed joint liquidator, together with the Second to Eighth Applicants, of Mirror Trading International (Pty) Ltd (registration number: 2019/205570/07) (in final liquidation) ("**MTI**").

4. The Second Applicant is **ADRIAAN WILLEM VAN ROOYEN N.O.**, an adult male insolvency practitioner practising as such at Investrust, situated at 64 Stella Street, Brooklyn, Pretoria, Gauteng, cited herein in his capacity as one of the duly appointed joint liquidators of MTI.

5. The Third Applicant is **CHRISTOPHER JAMES ROOS N.O.**, an adult male insolvency practitioner practising as such at Sebenza Trust, Unit 2A, Estcourt Avenue, Wierda Park, Centurion, Gauteng, cited herein in his capacity as one of the duly appointed joint liquidators of MTI.

6. The Fourth Applicant is **JACOLIEN FRIEDA BARNARD N.O.**, an adult female insolvency practitioner practising as such at Barn Trustees, 310 Soutpansberg Road, Rietondale, Pretoria, Gauteng, cited herein in her capacity as one of the duly appointed joint liquidators of MTI.

7. The Fifth Applicant is **DEIDRE BASSON N.O.**, an adult female insolvency practitioner practising as such at Tswane Trust Co., 1207 Cobham Road, Queenswood, Pretoria, Gauteng, cited herein in her capacity as one of the duly appointed joint liquidators of MTI.

8. The Sixth Applicant is **CHAVONNES BADENHORST ST CLAIR COOPER N.O.**, an adult male insolvency practitioner practising as such at CK Trust (Pty) Ltd, 120 Edward Street, Tygervalley, Bellville, Western Cape, cited herein in his capacity as one of the duly appointed joint liquidators of MTI.

9. The Seventh Applicant is **KEVIN TITUS N.O.**, an adult male insolvency practitioner practising as such at Titus & Associates Attorneys, 2nd Floor, Waalburg Building, 28 Wales Street, Cape Town, Western Cape, cited herein in his capacity as one of the duly appointed joint liquidators of MTI.

10. The Eighth Applicant is **DANIEL SANDILE NDLOVU N.O.**, an adult male insolvency practitioner practising as such at Siyabhula Administators, 28 Wale Street, Cape Town, Western Cape, cited herein in his capacity as one of the duly appointed joint liquidators of MTI.

11. The applicants bring this application in our capacities as the duly appointed joint liquidators of MTI. In confirmation of our aforesaid appointment, I attach hereto copies of the Master's relevant Certificates of Appointment, as issued to us, as annexures "**FA1.1**" and "**FA1.2**".

12. I am duly authorized to depose to this affidavit on behalf of the second to eighth applicants. They will depose to confirmatory affidavits.

THE RESPONDENTS

13. The First Respondent is **ANMARIE BARNARD**. She is listed as the First Respondent in annexure "**A**" to the Notice of Motion (annexure "**A**")..

14. The names of the remaining 194 respondents are reflected in annexure "**A**", items 2 to 195. I request that the contents of annexure "**A**", be read as if specifically incorporated herein.

15. As will be dealt with in more detail below, all the respondents are defendants in individual actions instituted by the applicants (as the plaintiffs) against the respondents (as defendants) in this Honourable Court. The case number of

each action is recorded in annexure "**A**". I will hereinafter refer to these individual actions as "**the separate actions**" and to the individual defendants, as "respondents" in this application.

16. All the respondents in the separate actions are represented by the same firm of attorneys, being Lister & Co with place of business at 30 Old Main Road, Hillcrest, KwaZulu-Natal. This application will therefore be served on those attorneys as it is a procedural step that forms part of each of the separate actions.

NATURE OF THIS APPLICATION

17. This is an interlocutory application in terms of Rule 11 of the Uniform Rules of Court, for the consolidation of all the separate actions instituted by the applicants against the respondents, reflected in annexure "**A**". Although the applicants, as plaintiffs in the separate actions are represented by five different legal firms, as indicated in annexure "**A**", the applicants have appointed Mostert & Bosman Attorneys to represent them in respect of all the listed separate actions for the purposes if this application.

18. The applicants contend that it will be convenient and beneficial to all interested parties, to the Court and to the administration of justice if all the separate actions are consolidated and proceed to trial as one consolidated action.

THIS COURT'S JURISDICTION

19. This Honourable Court has jurisdiction to hear this application, as all the separate actions were instituted in the Western Cape Division of the High Court.

THE APPLICANTS' LOCUS STANDI AND AUTHORITY

20. On 4 February 2022, the applicants were duly authorised to institute legal proceedings on behalf of MTI, in terms of a resolution of creditors passed at the second meeting of creditors. A copy of the resolution is annexed hereto, marked annexure "**FA2**".

BACKGROUND TO MTI'S LIQUIDATION

21. The background to MTI's liquidation is relevant to all the separate actions and will demonstrate why there is a substantial overlap of issues in the separate actions.

22. Prior to MTI's liquidation, it commenced business on 30 April 2019.

23. MTI at all material times had two shareholders, Johannes Cornelius Steynberg ("**Steynberg**") and Clynton Marks ("**Marks**"). Steynberg and Marks were involved in the management of MTI, with Steynberg in primary

control of the affairs of the entity, even though MTI had a *de facto* board of directors and a management team.

24. MTI, in marketing materials, initially described the nature of its business as '*an internet based crypto-currency club which performs its business through the website www.mymticlub.com and its official offices in Stellenbosch, Western Cape, South Africa. The benefit of members is in the form of the crypto-currency Bitcoin where members' Bitcoin grows through forex trading by a registered and regulated broker*' (my underlining).

25. In pursuance of its self-stated purpose, MTI invited members of the public to register on its website, and once registered, to move Bitcoin from the crypto currency wallets of these members to designated crypto currency wallets held by, and under the control of, MTI. In this manner, MTI was afforded the ability to apply and dispose of investors' Bitcoin at its absolute and sole discretion.

26. However, MTI in fact conducted an unlawful Ponzi-type or pyramid-type investment scheme ("**the Scheme**"). MTI lured thousands of individuals ("**the investors**") to "*invest*" Bitcoin in the Scheme on an unlawful and fraudulent basis.

27. In addition, MTI contravened various statutory provisions.

28. The business model of MTI was at all material times illegal with the result that all MTI investor agreements were *void ab initio*.

29. The petitioning creditor in the application for the winding-up of MTI, presented its application for the liquidation of MTI to this Honourable Court on 23 December 2020 and in terms of Section 348 of the 1973 Companies Act, the MTI liquidation proceedings are retroactively deemed to have commenced on this day.

30. MTI was provisionally wound-up by order of this Honourable Court on 29 December 2020 on the basis, *inter alia,* that it was unable to pay its debts and that the circumstances attendant upon MTI rendered it just and equitable to do so. The order was made final on 30 June 2021. The provisional and final liquidation orders are attached hereto marked annexure "**FA3**" and "**FA4**" respectively.

31. MTI is a company which, at all material times, have been unable to pay its debts within the meaning of Sections 339 and 340 of the 1973 Companies Act, as read with Item 9 of Schedule 5 of the 2008 Companies Act and, accordingly, the provisions of the Insolvency Act ,24 of 1936, ("**the Insolvency Act**") apply to the winding-up of MTI, insofar as it may be appropriate.

THE ORDER DECLARING MTI'S BUSINESS UNLAWFUL

32. In a subsequent application launched by the liquidators under case number 15426/2021, this Honourable Court *inter alia* declared on 26 April 2023 that:

> "*1. The business model of Mirror Trading International (Pty) Ltd (in liquidation) ("MTI") is declared to be an illegal and unlawful scheme.*
>
> *2. All agreements concluded between MTI and its investors in respect of the trading/management/investment of Bitcoin for the purported benefit of the investors, are declared unlawful and void ab initio.*"

33. The judgment under case number 15426/2021 is reported as *Bester NO and Others v Mirror Trading International (Pty) Ltd t/a MTI (In Liquidation) and Others* 2024 (1) SA 112 (WCC). This judgment deals with the context to the fraudulent and illegal business of MTI, and its ultimate demise. I will refer to this judgment hereinafter as "**the Ponzi judgment**".

THE APPLICANTS' APPLICATION FOR DIRECTIONS IN TERMS OF SECTION 387(3) OF THE 1973 ACT IN RESPECT OF CLAIMS BY AND AGAINST INVESTORS

34. Due to the novelty of dealing with a liquidated estate where investors have only invested and were paid out in the crypto currency bitcoin (no fiat currency was involved) the applicants, on advice, launched an application in this Honourable Court in terms of Section 387(3) of the 1973 Companies Act

to request this Honourable Court's directions in respect of a number of identified issues, which included the following:

34.1. the nature of bitcoin and its classification in an insolvent estate;

34.2. what claims the different types of investor creditors have against MTI and what is the legal basis of such claims;

34.3. how should the claims of investor creditors against MTI be quantified, with particular reference to the dates to be used for the quantification of the claims;

34.4. how the liquidator should go about when dealing with claims submitted in the MTI liquidation proceedings by investor creditors.

35. I shall refer to this application hereinafter as "**the Section 387 claims application**".

36. The Section 387 claims application was opposed by a number of investors. On 9 November 2023, the Honourable Mr Acting Justice Maher gave judgment and issued an order, copies of which are respectively annexed hereto marked "**FA5**" and "**FA6**". I hereinafter refer to this judgment as "**the Section 387 claims judgment**" and the order as "**the Section 387 claims order**".

CATEGORIES OF INVESTORS IN MTI

37. There are three possible factual scenarios that may be applicable regarding the transactions which investors could have concluded with MTI.

38. The first class of investors are those individuals who invested in the Scheme, but who did not receive anything in return. ("**Class 1 Investors**").

39. The second class of investors are those individuals who invested in the Scheme and who, although having received a return on their investments, received less than what they invested. These investors, although having received a return, did not profit from the Scheme. ("**Class 2 Investors**").

40. The third class of investors are those individuals who invested in the Scheme and who received returns that exceeded the amount invested in the Scheme, thereby profiting from being participants in the scheme. ("**Class 3 Investors**").

41. All the respondents in this application are either Class 2 investors or Class 3 investors. Class 2 investors, although having received a return on their investments less than what they have invested, received such return within a period of six (6) months prior to the liquidation of MTI. Class 3 investors received returns in excess of the amount of capital invested in the Scheme, thereby profiting from being participants in the Scheme, in respect of which profit those investors did not give any value in return.

42. MTI kept record of transactions between it and each of its investors on a database hosted by Maxtra Technologies in India ("**the MTI database**"). Stored on this database was information concerning the details of each investor's bitcoin deposit(s) with MTI in the Scheme, the purported referral commissions, bonuses, and "profits" credited to investors' crypto currency accounts (in bitcoin), as well as the actual number of bitcoin that each member withdrew from his or her "*investment*" in MTI.

THE LIQUIDATORS' CLAIMS AGAINST THE RESPONDENTS

43. As stated above, this Honourable Court has held that MTI was an illegal and unlawful scheme.

44. As a general proposition, an unlawful Ponzi-type or pyramid-type investment scheme is insolvent from inception because once an investor makes an investment into such a scheme, pursuant to a fraudulent and void investment agreement, that investor will immediately be entitled to claim restitution of what was performed in terms of the void investment agreement. Full restitution is invariably impossible, because what was invested from day one will never again be available for return to investors, due to the nature of the scheme, the misappropriation of what had been invested, costs associated with running the scheme and repayment of undue "profits" and the payments made to earlier investors. I am advised that this principle has been confirmed

by the Supreme Court of Appeal in the matter of *Fourie NO and others v Edeling NO and others* [2005] 4 All SA 393 (SCA).

45. The effect of the aforesaid is that none of the investments made into the Scheme can be considered to contribute to MTI's solvency because of the neutralizing corresponding liability created, as explained above, that comes into existence immediately on date of investment.

46. All the respondents listed in annexure "**A**", from time to time, opened, controlled, transacted in and/or held accounts in MTI for his/her own benefit and from time to time, transferred bitcoin to MTI and received transfers of bitcoin from MTI.

47. Therefore, transfers of bitcoin by MTI to any of the investors, including the respondents, constituted a "*disposition*" of the property of MTI, as contemplated in section 2 of the Insolvency Act. These dispositions fall under either Sections 26, 29 or 30 of the Insolvency Act.

48. The dispositions in terms of section 26 are concerned with transfer of bitcoin from MTI to a respondent investor more than the bitcoin the investor had transferred to MTI. Therefore, every transfer of additional bitcoin by MTI to a respondent was not made for value and is due to be set aside as a disposition contemplated in Section 26 of the Insolvency Act.

49. The dispositions in terms of Section 29 are concerned with dispositions made by MTI to a particular respondent within six (6) months before the date of liquidation of MTI and are therefore liable to be set aside as a disposition contemplated in Section 29 of the Insolvency Act.

50. In the alternative to the applicants' Section 26 and 29 claims, the applicants are entitled to an order that each disposition of bitcoin made by MTI to the respondents constitutes an undue preference of a particular respondent by MTI, as contemplated in Section 30 of the Insolvency Act.

51. In these circumstances, the applicants are entitled to an order against the respondents that they be directed to return the bitcoin that they have received from MTI, in terms of either Sections 26, 29 or alternatively Section 30 of the Insolvency Act to the applicants, or in default thereof, to pay to the applicants the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, whichever value is higher.

52. In summary, the liquidators' claims against the respondents relate to the setting aside of the dispositions to the respondents from MTI, based on the aforesaid provisions of the Insolvency Act.

53. In respect of each of the separate actions listed in annexure "**A**":

53.1. the applicants instituted an action for the setting aside of dispositions of MTI's property in the form of bitcoin, in terms of

Section 26 and/or 29 and/or 30, read with Section 32 of the Insolvency Act;

53.2. an appearance to defend the action was entered through the same firm of attorneys, being Lister & Co (**"Lister & Co"**);

53.3. where so indicated in annexure "**A**", a plea was filed through Lister & Co.

54. Copies of the particulars of claim and plea in respect of the first respondent, are annexed hereto marked annexure "**FA7**" and "**FA8**" respectively.

55. I confirm that in those actions listed in annexure "**A**" where pleas have been filed on behalf of a respondent:

55.1. save for certain special pleas dealt with below, the pleas are almost identical, corresponding in all material respects with the plea of the first respondent (annexure "**FA8**");

55.2. certain respondents raised one of the three special pleas dealt with below.

First special plea: *lis pendens*

56. The first special plea is *lis pendens*, in respect of the question of the unlawfulness of the MTI scheme and whether the investment agreements concluded between MTI and the investors, were *void ab initio.* The first special plea was raised by the first respondent, as per paragraphs 1 to 7 in "**FA8**". This was based on the fact that the Ponzi judgment was the subject of appeal remedies invoked by the sixth respondent in the aforesaid application, one Mr Clynton Marks. I pause to note that the basis of this special plea has subsequently fallen away, as the application for reconsideration by Mr Marks in terms of the provisions of Section 17(2)(f) of the Superior Courts Act, was refused by the SCA on 11 April 2024. A copy of the order of the SCA is annexed hereto marked "**FA9**". In terms of the provisions of Rule 19 of the Constitutional Court, Mr Marks had a period of 15 court days within which to file an application for leave to appeal to the Constitutional Court. I confirm that, to date, no such application for leave to appeal to the Constitutional Court has been filed. I am advised that the special plea of *lis pendens* can therefore no longer be a live issue.

The second special plea: Section 32 plea

57. The first respondent raised the second special plea, as per paragraphs 8 to 14 of "**FA8**". Not all respondents raised the second special plea. For ease of reference, the second special plea will be referred to as "**the Section 32 plea**".

58. In the Section 32 plea the respondents, with reference to the abovementioned Section 387 claims judgment and order, plead that the applicants are not "*entitled to claim from the defendants the value of bitcoin as at the date of disposition or on the date which the dispositions are to be set aside, whichever value is higher*", as, so the respondents allege, the Section 387 claims judgment, on a proper interpretation thereof, *"directed that the value of investments of bitcoin in the scheme should be calculated in rand value, as at the date upon which the relevant investor(s) made the relevant investment in the scheme and further that the value of returns of bitcoin to investors should be calculated in rand value, as at the date upon which the relevant return or portion thereof was paid by MTI to the relevant investor*".

59. The respondents effectively plead that the applicants are not entitled to rely on the provisions of Section 32(3) of the Insolvency Act, insofar as it provides that, when a court sets aside any disposition of property in terms of the provisions of Sections 25, 26, 29, 30 or 31 of the Insolvency Act, the court shall declare the trustee entitled to recover any property alienated under the said disposition or in default of such property the value thereof at the date of the disposition or at the date on which the disposition is set aside, whichever is the higher (my underlining).

60. I am advised that the second special plea too has no merit, *inter alia* for the following reasons:

60.1. the context within which the relevant Section 387 claims order was sought and made, was for the expressly stated purpose of calculating a claim by a Class 3 investor against the estate, pursuant to returning the disposition(s) to the liquidators, as explained in the founding affidavit in the Section 387 claims application. In this regard I refer to paragraph 120.6.20.4 on page 66 of the Section 387 claims application record, an extract of which is annexed hereto marked "**FA10**";

60.2. the Section 387 claims order, specifically provided that the quantum of claims by the applicants, would be in "*whatever form contemplated by Section 32(3) of the Insolvency Act";*

60.3. the provisions of Section 32(3) are, in any event, peremptory and, with respect, the court in the Section 387 claims judgment could not (and indeed did not purport to) direct the applicants to act otherwise than in accordance with the said provisions of Section 32(3);

60.4. furthermore and in any event, when a court sets aside a disposition in terms of Sections 26, 29 and 30, it is enjoined by Section 32(3) to declare the trustee entitled to recover the property alienated and only in default of the property, the value thereof at the date of the disposition or on the date on which the disposition is set aside,

whichever is the higher. These provisions are peremptory and the court has no discretion to deviate therefrom;

60.5. the Section 387 claims judgment, in paragraph 7 thereof, also and in any event made it clear that the relief granted, is not in the form of a declaratory order. It is accordingly not dispositive of the rights of the parties and is not a declaratory order in respect of the rights or obligations of any of the parties.

Third special plea: prescription

61. The third special plea is prescription. A copy of the 20th respondent's plea in which a plea of prescription is raised, is annexed hereto marked "**FA11**". It is pleaded that "*the alleged debt sued for by the plaintiffs is a debt within the meaning and effect of Section 11(d) of the Prescription Act, 68 of 1969 in terms of which debts prescribe after a period of three years.*" The 20th respondent contends that the (then provisional) liquidators, were granted extended powers by the Court on the 22nd of January 2021, which powers *inter alia* included the power and authority to institute legal action against debtors.

62. The 20th respondent accordingly pleads that "*as from the 22nd of January 2021 the company through the liquidators aforementioned were duly authorised to sue the Defendant as a debtor and had knowledge of the identity of the Defendant and the facts from which the alleged debt arose as*

at 22 January 2021, alternatively had the company through its directing minds aforesaid exercised reasonable care it could and should have acquired such knowledge on or before the 30th of April 2021 and is therefore deemed to have had such knowledge by then." The 20th respondent therefore pleads that where the summons was served more than three years after the aforementioned dates (being 22 January 2021, alternatively 30 April 2021), the alleged debt had become prescribed in terms of Section 11(d) read with Section 12(3) of the Act.

63. I am advised that the prescription plea too has no merit, *inter alia* for the following reasons.

63.1. The applicants, despite exercising reasonable care, did not have, and could not have acquired, knowledge of the identity of the respondents and of the facts from which the debt relied on by the applicants arose, until, at the earliest, 1 June 2022, alternatively on a date less than 3 years before the date of the service of the summons on the respondents.

63.2. Pursuant to the provisions of Section 12(3) of the Prescription Act, the debt therefore was not due until, at the earliest, 1 June 2022, alternatively on a date less than 3 years before the date of the service of the summons on each respondent. The prescription period therefore only commenced to run, at the earliest, on 1 June

2022, alternatively on a date less than 3 years before the date of the service of the summons on the Respondents.

IDENTIFICATION OF WHICH SPECIAL PLEAS WERE RAISED BY WHICH RESPONDENTS

64. Certain respondents only raised the *lis pendens* special plea, whilst certain respondents raised *lis pendens* and the Rule 32 plea. The 20th respondent raised the special plea of prescription. The types/combinations of special pleas raised by the respondents, are identified in annexure "**A**" to the Notice of Motion.

65. In respect of the plea over on the merits, the respondents all, *inter alia*, plead as follows:

65.1. the contents of paragraphs 1 to 14 of the particulars of claim (the citation of the parties, the court's jurisdiction and the plaintiffs' locus standi and authority), are admitted;

65.2. the contents of paragraph 15 of the particulars of claim (in essence the unlawful nature of MTI's business and the fact that all investment agreements between MTI and the investors were *void ab initio*, as a result of the unlawfulness of the scheme), are denied. I pause to note that the applicants are advised that, upon a proper interpretation of the Ponzi judgment, all the respondents are bound

by the judgment and will therefore be estopped from denying the unlawfulness of the scheme and the voidness of the investment agreements. The plaintiffs have filed and will continue to file replications in all those matters where this denial has been pleaded, on the basis of the Ponzi judgment being binding on those respondents;

65.3. the contents of paragraphs 16 to 19 of the particulars of claim (the date on which the liquidation application was presented to court and the dates on which the provisional and final liquidation orders were granted), are admitted;

65.4. the contents of paragraph 20, including 20.1 and 20.2 of the particulars of claim (the allegation that the liabilities of MTI exceeded its assets at all relevant times and that MTI was unable to pay its debts at all relevant times as contemplated in Section 339, read with Section 340 of the 1973 Companies Act), are denied. I pause to note that in the Ponzi judgment the Honourable Court was not prepared to grant a declaratory order on this issue with the evidence presented at the time and having regard to those proceedings being on motion. The applicants will have to prove this factual position by means of expert evidence at the hearing of each separate action;

65.5. the contents of paragraphs 21 and 22 of the particulars of claim (the identification of the specific investor accounts in MTI which the specific defendant controlled/transacted for his or her own benefit and the fact that the specific defendant, from time to time, transferred bitcoin to MTI and received transfers of bitcoin from MTI in respect of those identified accounts), are in most instances admitted;

65.6. the contents of paragraphs 23, 24 and 25 of the particulars of claim (the allegations regarding the specific detail of the bitcoin deposited and received by a defendant and the legal conclusion that the applicants are therefore vested with claims in terms of Section 26 and/or 29 and/or 30 of the Insolvency Act), are denied.

66. In respect of those matters where specific defendants denied ownership or beneficial control of specific accounts and where the details of the transactions in respect of specific accounts as pleaded in the particulars of claims, are denied, the applicants intend to obtain further relevant information from those defendants through discovery and further particulars, in order for the applicants' forensic digital experts to further investigate and verify the ownership/identity of the person who was in control of the relevant account and to verify the precise details of each transaction on those accounts.

REASONS FOR CONSOLIDATION

67. Rule 11 of the Uniform Rules of Court provides that "*where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions ...*".

68. The object of the rule is to avoid multiple trials based on the same facts proceeding independently of each other.

69. I am advised that convenience is the paramount consideration in an application of this nature. The applicants submit that it will be convenient to consolidate the main actions for the following reasons:

69.1. The applicants are the plaintiffs in all the separate actions;

69.2. All the separate actions are based on the same groups of causes of action;

69.3. The defences raised by all the respondents all fall within the same categories as described above;

69.4. The underlying facts relating to the nature of the investment scheme operated by MTI and the manner in which the affairs of MTI were conducted and in which the payments of bitcoin were received

and made which gave rise to the claims, are common to all the cases;

69.5. The interpretation of the Ponzi judgment and the Section 387 claims judgment, which form the basis of the two special pleas raised by all the respondents, are identical to all the cases;

69.6. The manner in which the owner/beneficial controller of a specific account opened in the records of MTI, was identified and linked to a specific defendant, and how the quantum of the claims against each defendant were calculated, were all done in a similar manner by the same set of forensic digital experts, who will be called by the applicants as expert witnesses for purposes of the quantification of the claims against the defendants.

69.7. The evidence that will have to be led by the applicants with regard to the insolvency (both factual and commercial) of MTI at all relevant times, will be presented through forensic- and accounting experts and will be identical in respect of each of the separate actions;

69.8. There is accordingly a large amount of identical overlapping evidence that will have to be led in each trial to prove the applicants' claims, and it will accordingly result in unnecessary repeat

attendances by witnesses and substantial unnecessary costs if the actions are not consolidated;

69.9. One consolidated action and trial will ensure that there is no repetition of the same evidence in the different trials, and it will avoid the risk of conflicting judgments by different judges in different trials on issues that are common to all the actions;

69.10. On 26 July 2024, the applicants' attorneys informed Lister & Co in writing of the intention to proceed with an application for the consolidation of all matters in this Court, where the defendants are represented by them. A copy of this letter is annexed hereto marked "**FA12**". As appears from this letter, it was proposed that the parties engage in a discussion in order to attempt reaching consensus on the consolidation and certain practicalities. Except for some informal communication between the applicants' attorneys and Lister & Co, no further formal progress was made in this regard.

70. Moreover, the consolidation of the actions will not cause substantial prejudice to other parties, and it will in fact be beneficial to all the interested parties in the proceedings. Apart from the obvious saving of costs, the consolidation will also expedite, facilitate and ease the resolution of the separate actions for *inter alia* the following reasons.

70.1. Each of the respondents in the separate actions is represented by Lister & Co.

70.2. Consolidation will limit the attendances required by the parties' respective legal representatives to, for instance, pre-trial meetings and conferences, and at the trials, with a massive saving in costs.

70.3. It will assist in formulating and narrowing the issues in dispute between the parties. It will limit the need for discovery and/or further discovery in each of the separate actions to one consolidated action. It will also prevent witnesses from having to testify on the same issues more than once.

70.4. It will advance the administration of justice in that hundreds of unnecessary court days will be saved by running a single consolidated action before only one Judge, rather than many separate trials before different Judges.

70.5. The applicants have instituted thousands of similar actions in all the different High Court jurisdictions in South Africa. In this Honourable Court alone, substituted service of summonses in such actions against more than 10 000 investors was authorised in case numbers 8025/24 and 9096/24. Such substituted service has been effected on thousands of those investors. It is anticipated that a

judgment in the action to be consolidated, will serve as strong persuasive authority in matters to be heard in other divisions.

70.6. The winding-up process of MTI will be expedited. It therefore will be to the advantage of the concursus of creditors, particularly the thousands of investors who have received no repayment.

COSTS

71. I respectfully submit that the costs herein should be costs in the cause in the consolidated action, if unopposed, alternatively that the costs of this application be paid by any party who opposes same, as per scale "C", such costs to include the costs consequent upon the employment of two counsel where so employed.

LEAVE TO APPROACH THE COURT TO CONSOLIDATE FURTHER ACTIONS

72. As explained above, many thousands of similar actions were instituted by the applicants in the different divisions of the High Court throughout South Africa, in which actions the applicants are represented by a panel of five different legal firms.

73. Once the pleas in those actions that are defended have been received and considered, the applicants foresee that it will be necessary to consolidate a number of further matters to those matters listed in annexure "**A**". In order

to provide a cost effective and convenient mechanism to the parties and to this Honourable Court to consolidate further actions in future, the applicants humbly request an order that leave be granted to them to approach this Honourable Court on the same papers, duly supplemented where necessary, in order to obtain a further consolidation order in respect of additional matters that may be identified as suitable to be consolidated with these matters which are to be consolidated in terms of this application.

CONCLUSION

74. In the premises, I humbly submit that the applicants have made out a proper case for the relief sought in the Notice of Motion and pray for an order in terms thereof.

HERMAN BESTER

Sworn to and signed in my presence at Belville on this 19th day of November 2024 by the deponent who declared that he:

(a) knows and understands the contents of this affidavit;
(b) has no objection to the taking of the prescribed oath;
(c) considers the oath to be binding on his conscience;

and uttered the words: *"I swear that the contents of this affidavit are true, so help me God."*

COMMISSIONER OF OATHS

HILLARY ANNE PLAATJIES
COMMISSIONER OF OATHS
ATTORNEY RSA
BLAAUWKLIP OFFICE PARK - 2
WEBERS VALLEY ROAD
STELLENBOSCH, RSA

"FA 1.1"

REPUBLIC OF SOUTH AFRICA

SERTIFIKAAT VAN AANSTELLING VAN LIKWIDATEUR

[Maatskappywet, No 61 van 1973 (soos gewysig)]

CERTIFICATE OF APPOINTMENT OF LIQUIDATOR

[Companies Act, No 61 of 1973 (as amended)]

NO: C000906/2020

Hierby word gesertifiseer dat:
This is to certify that:

1.	BARNARD, JACOLIEN FRIEDA	**ID.** 8210030014085
2.	BASSON, DEIDRE	**ID.** 7009290090087
3.	BESTER, HERMAN	**ID.** 7009235139080
4.	COOPER, CHAVONNES BADENHORST ST CLAIR	**ID.** 6905045153081
5.	ROOS, CHRISTOPHER JAMES	**ID.** 8409215014080
6.	VAN ROOYEN , ADRIAAN WILLEM	**ID.** 6911185280080
7.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	**ID.** XXXXXXXXXXXXXXXXXXXX

aangestel is as Likwidateur met die magte soos uiteengesit in Artikel 386(1) van Wet No 61 van 1973 saamgelees met item 9 van Skedule 5 van Wet 71 van 2008 van die Maatskappy bekend as:

appointed as Liquidator with the powers as set out in Section 386(1) of Act 61 of 1973 read together with item 9 of Schedule 5 of Act 71 of 2008 of the Company known as:

MIRROR TRADING INTERNATIONAL (PTY) LIMITED T/A MTI 2019/205570/07

wat onder Likwidasie geplaas is
which has been placed under Liquidation 30-6-2021

van die Hoë Hof van Suid-Afrika,
by Order of the High Court of South Africa, WESTERN CAPE HIGH COURT (CAPE TOWN) Afdeling / Division

Geteken te
Signed at CAPE TOWN

op
on 11 NOVEMBER 2021

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2021 -11- 11
A/M: INSOLVENT ESTATES 2
MEESTER VAN DIE WES KAAP HOË HOF

DOJCD\HBOUWER
MEESTER VAN DIE HOË HOF VAN SUID-AFRIKA
MASTER OF THE HIGH COURT OF SOUTH AFRICA

11 NOVEMBER 2021
DATUMSTEMPEL
DATE STAMP

URN: 8992020INS000906

"FA 1.2"

J409

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

MASTERS CERTIFICATE

MIRROR TRADING INTERNATIONAL (PTY) LTD
C906/2020

This is to certify that

DANIEL SANDILE NDLOVU
&
KEVIN TITUS

are added as co-Liquidators in terms of section 374 the Companies Act 61 of 1973 with,

ADRIAAN WILLEM VAN ROOYEN
CHRISTOPHER JAMES ROOS
CHAVONNES BADENHORST ST CLAIR COOPER
HERMAN BESTER
DEIDRE BASSON
JACOLIEN FRIEDA BARNARD

ASST. MASTER OF THE HIGH COURT, CAPE TOWN

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2023 -04- 05
A/M: INSOLVENT ESTATES 3
MEESTER VAN DIE WES KAAP HOË HOF

"FA2"

MIRROR TRADING INTERNATIONAL (PTY) LTD - (IN LIQUIDATION)
MASTER'S REFERENCE NUMBER: C906/2020

RESOLUTIONS SUBMITTED AT THE SECOND MEETING OF CREDITORS AND MEMBERS, IN TERMS OF SECTION 402 OF THE COMPANIES ACT, ACT 71 OF 1973, AS AMENDED, TO BE HELD BEFORE THE MASTER OF THE HIGH COURT CAPE TOWN, ON FRIDAY, THE 10TH OF DECEMBER 2021 AT 09H00.

RESOLVED:

1. That all actions of whatsoever nature heretofore taken by the liquidators and also as set out in the report, to which these Resolutions are attached, be and are hereby confirmed, ratified and approved of.
2. That the liquidators be and are hereby granted the authority and shall be vested with all the powers mentioned in the Companies Act 61 of 1973, as amended.
3. That the liquidators be and are hereby authorized to engage the services of Attorneys, Accountants and/or Counsel and/or Recording Agents, as they may deem necessary the purpose of:
   a. taking any legal opinion that may be considered necessary in the interest of the estate;
   b. instituting or defending on behalf of the Company any action or other legal proceedings of a civil nature, and subject to the provisions of any law relating to criminal procedure, any criminal proceedings;
   c. holding enquiries and examinations in terms of Sections 415, 416, 417 and 418 of the Companies Act, 61 of 1973, as amended, or as read in conjunction with the Insolvency Act nr. 24 of 1936, as amended and to appoint attorneys and counsel and also accountants and any other advisers, to act on their behalf in regard to such enquiries and at the cost of the Company to assist them in regard to such enquiries, and particularly to hold an enquiry as envisaged in the report to creditors, to which these resolutions are attached;
   d. to draw any contracts and sign any documents as may be necessary;
   e. for any purpose, in doing searches at the Deeds Offices, Registrar of Companies and other registry, as they in his/their sole and absolute discretion may deem necessary, all costs so incurred to be costs in the liquidation;
   f. for any other purpose whatsoever, as they, in their sole discretion, may deem fit;
   g. that the liquidators be duly authorized to agree any tariff and/or scale of rates to be used in determination of any legal or other fees, and in their sole discretion to agree the quantum of such fees, which legal fees shall be on an attorney and own client basis;
   h. all costs incurred to be treated as administration costs of the estate;
4. That the liquidators be and are hereby authorized and empowered to investigate any apparent voidable and/or undue preference and/or any disposition of property, and to take any steps which they in their absolute discretion may deem necessary, including the institution of legal actions and the employment of attorneys and/or counsel to have these set aside, and to proceed to the final end or determination of any such legal actions or abandon the same at any time as they in their sole discretion may deem fit, all costs so incurred to be costs in the liquidation. The costs referred to herein being subject to the same conditions and/or he same scales as are set out above.

5. That the liquidators be and are hereby authorized to collect any outstanding debts due to the Company in liquidation, and for the purpose thereof, to sell or compound any of these debts for such sum, and on such terms and conditions, as they in their sole discretion may deem fit, or to abandon any claims which they in their sole discretion may deem to be irrecoverable, and to appoint debt collectors in their sole discretion to assist them in the recovery of outstanding debts, and to take all necessary steps on the terms and provisions as they in their sole discretion as liquidators may deem fit, to ensure the maximum debt collections, or to institute Legal Action and/or employ attorneys and/or counsel in connection with the recovery of the debts, and to proceed to the final end or determination of any such legal action instituted or to abandon the same at any time as they in their sole discretion may deem fit, all costs to incurred to be costs in the liquidation. The costs referred to herein being subject to the same conditions and on the same scales as are set out above.

6. That the liquidators be and are hereby authorized to sequestrate the estate of any person or liquidate any Company in order to recover any monies due to the Company where they consider/s it necessary and that the costs in relation thereto be costs in the liquidation. The costs referred to herein being subject to the same conditions and on the same scale as are set out above.

7. That the liquidators be and are hereby authorized to engage the services of bookkeepers, accountants and auditors, consultants, document managers, IT consultants and any other advisers to investigate and write up the books of the Company as may be required, and if necessary, to produce an audited balance sheet as at the date of liquidation, either for the purpose of investigating the affairs of the Company, establishing the claims of creditors, or any other purpose as they in their sole discretion may deem fit, all costs incurred in relation thereto to be costs in the liquidation. The liquidators, in their sole discretion, may agree the costs with the relevant service providers and advisers on behalf of the Company. The Liquidators be and are hereby authorized and instructed to pay the costs for and relating to preparing creditor claims and representing creditors, and preparing for same, at meetings and assisting in regard to the payment of their dividends, as a cost of administration from the assets of the estate. All costs incurred in connection with any such services and service providers to be treated as costs of the administration of the estate. The costs referred to herein being subject to the same conditions and on the same scale as are set out in 3.g above.

8. That the liquidators be and are hereby authorized to sell or in any other way dispose of any immovable or movable assets of the Company, whether as going concerns, or otherwise, or whether separately or jointly with any other person or corporate entity, and on such terms and conditions as the liquidators in their sole discretion may decide on and particularly in their sole discretion, should they decide to sell or otherwise dispose of any such asset, jointly with any other person or corporate entity, on the method and quantum of division, of the total consideration, by public auction, tender or private treaty and on such terms and conditions as the liquidators in their sole discretion may deem fit and any other costs thereof which they, in their sole discretion may deem fit and any other costs thereof which they, in their sole discretion cannot pass over, to be costs of liquidation.

9. That the Liquidators be and is/are hereby authorized to sell any immovable property as per the instructions given by the secured creditor at any given time. This includes the proceeding to public auction by the auctioneers nominated by the secured creditor. In such an event the secured creditor will have the opportunity to assess the offer and decide to buy the property in or instruct the liquidator to further market the property and / or proceed with a second auction at a later stage.

10. That the liquidators, in the case of the sale of any immovable property by the estate, and where the liquidators contract that they as sellers shall be entitled to nominate the conveyancers to do the conveyancing of the property to be purchaser, shall be entitled to instruct attorneys, to effect such registration of transfer on condition that the purchaser pays all cost or transfer and that the seller estate has no liability for such costs of transfer or any part thereof.

11. That the liquidators are furthermore authorized in their sole discretion to abandon any asset for which they can find no purchaser, or which is not practical to sell, the costs of which are the costs of the liquidation.

12. That in the event of any asset which is subject of a mortgage bond, pledge or any other form of security not realizing sufficient to pay the claim of the secured creditors, plus the pro rata share of the costs of administration in full, that the liquidators be and are hereby authorized in their discretion to sell such asset to the creditor concerned at an agreed valuation, subject to the payment by such creditor of pro rata of the costs of administration in terms of Section 89 of the Insolvency Act, as amended.

13. That the said liquidators be and are hereby authorized and empowered in their sole discretion to compromise or admit any claim against the Company, whether liquidated or unliquidated arising from any guarantee, damages claim or any other cause whatsoever, as a liquidated claim in terms of Section 78 (3) of the Insolvency Act, as amended, at such amount as may be agreed upon by both the creditor concerned and the liquidators, and to accept payment of any claims, due to the Company by way of delivery or issue of shares and to appoint any directors to any subsidiary companies, as the liquidators may deem necessary and to sell any subsidiaries on such terms and conditions as they in their sole discretion, on behalf of the Company, deem fit. In view of the large number of MTI members and the fact that back-office data is available, the liquidators be and are herby authorized and empowered to use the following procedure for proof of claims against the estate, instead of any other method or in addition thereto as they may decide namely:

    a) Appoint a suitable data service provider with knowledge of insolvency claims to be provided with a copy the back-office database and to use that data for further analysis of what the claim of every MTI member should be, and which person received dispositions that may be set aside, with instructions to prepare for every MTI member a statement of transactions in a format that is easy to follow.

    b) The data service provider to compare all existing claims to the result of the said statement of transactions and to provide a report with recommendations of which claims may be admitted at which amounts.

    c) If the MTI member has already submitted a claim for an amount that agrees with the amount so recommended the liquidators may admit such claim at that amount.

    d) If the MTI member has already submitted a claim for an amount that does not agree with the amount recommended, the liquidators must advise the MTI member accordingly and provide a copy of the aforesaid statement of transactions and invite the member to provide further information and debate the correct amount of the claim according to such suitable procedure as may be determined by the liquidators on a case-by-case basis. Such advice should also be digital only without paper, to be produced by the data service provider in such format as directed by the liquidators.

    e) For those members that have not yet submitted claims, the liquidators must send to each such member a copy for the aforesaid statement of transactions and invite the member to indicate whether the member agrees with the statement and whether the member wishes his or her claim to be admitted against the estate.

    f) Such statements or claims will be kept in digital format only and need not be printed. They must however all be saved in an archive PDF format and retained as part of the records of the estate.

14. That the liquidators are authorized to take all such other steps and to do such other acts as they in their sole discretion on behalf of the Company, may deem fit, and at the cost of the Company.

15. That the Liquidators be and are hereby authorized to make application for the destruction of the books and records of the Company, six months after confirmation of the Final Account;

16. That any excess in premiums and stamp duty on Security Bonds or Asset Insurance, which is more than that provided for in Rule 31, laid down by the Master of the High Court, be and are hereby authorized as an administration expense of the estate.

17. That the actions of the liquidators in employing nightwatchmen/security guards to protect the premises and assets of the Company, be and are hereby approved and ratified, all costs relating thereto, to be the costs in the liquidation.

18. That the actions of the Liquidator in advertising, calling for tenders for the purchase of the business and/or assets of the Company, be and are hereby approved and ratified, all costs so incurred to be costs in the liquidation.

19. That the actions of the provisional liquidators and/or liquidators in having disposed of assets, shares and loan accounts, prior to the date of this meeting, be and are hereby approved and ratified, all costs incurred in relation thereto to be costs of the liquidation.

20. That the actions of the provisional liquidators and/or liquidators in continuing the business of the Company and retaining staff be and are hereby approved and ratified, all costs so incurred to be the costs of liquidation.

21. That the actions of the provisional liquidators and/or liquidators in employing salesmen and administration personnel and generally to protect the interests of creditors be and are hereby approved and ratified and the fees of such personnel to be costs in the liquidation.

22. That the liquidators be and are hereby authorized and empowered to continue such the business of the Company from the date of liquidation until such time as creditors instruct them to the contrary or until such time as the assets are realized and to do all things which they in their sole discretion may deem necessary for the successful continuation of the business (all costs incurred to be costs in the liquidation) and without restricting the generalities of their powers, he/they are hereby specifically authorized;

    22.1 To discharge and engage employees and to fix their remuneration;

    22.2 To continue the lease of the Company's premises until such time as it is decided to determine the lease.

    22.3 The employ persons to undertake the physical count and valuation of stock in trade at the beginning and end of any trading period subsequent to the date of liquidation of the Company.

    22.4 To employ persons to prepare an inventory or inventories of all movable assets of the Company.

    22.5 Generally, to do all things which they in their discretion may deem necessary to determine the lease.

23. That the liquidators and/or liquidators are hereby indemnified against any losses and/or claims for damages resulting from the continuation of the Company's business, all such losses and damages to be costs in the liquidation.

24. That the liquidator/s are hereby authorized to submit for determination and/or arbitration any dispute concerning the estate or any claim or demand by or upon the estate and that any costs so incurred to be costs of administration and paid for by the estate.

25. That the further administration of the affairs of the Company be left entirely in the hands and at the discretion of the liquidators.

26. That the liquidators are hereby authorized to appoint a representative on behalf of creditors to attend creditors meetings and tender the cost.

27. It is resolved that the Liquidators "out of pocket" expenses be regarded as items of expenditure and may be charged as administration costs that would include: -

The costs of agents to obtain: -

27.1 ITC searches and documents

27.2 Credit Inform searches

27.3 Cipro searches

27.4 Deeds Office searches

27.5 Natis document searches

28. The costs of the use of couriers for the delivering and acceptance of any document or parcel on behalf Estate when the local postal service is not used;

29. Travelling expenses which include time, fuel, kilometers, toll fees, airfares and accommodation.

30. Interest be charged on all funds and monies advanced by any person or company at prime rate till payment thereof.

The liquidator's Resolutions for adoption by creditors were presented and approved of.

ADOPTED ON BEHALF OF CREDITORS:

for liquidators, present at 2nd meeting, not voting
S.C Santacruz

ADOPTED ON BEHALF OF MEMBERS:

PRESIDING OFFICER:

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2022 -02- 04
A.M: INSOLVENT ESTATES 3
MEESTER VAN DIE WES KAAP HOË HOF

6

"FA3"

"X"

29-12-2020

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 19201/2020

BEFORE THE HONOURABLE MR JUSTICE ROGERS
AT CAPE TOWN: ON TUESDAY, 29 DECEMBER 2020

In the matter between: -

ANTON FRED MELCHIOR LEE Applicant

and

MIRROR TRADING INTERNATIONAL (PTY) LIMITED First Respondent
T/A MTI
(REGISTRATION NUMBER: 2019/205570/07)
Registered office at: **43 Plein Street**
Unit 1
First Floor
Stellenbosch
Western Cape

FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) Second Respondent
Private Bag X5020, Cape Town 8000

2020 -12- 28
DRAFT ORDER
WCD-010

Having read the documents filed of record and having heard Counsel for the Applicant, it is hereby ordered that:

1. The First Respondent is hereby placed under provisional liquidation in the hands of the Master of the High Court, Cape Town.

2. A rule *nisi* is hereby issued calling upon all persons interested to show cause, if any, on Monday, 1 March 2021 at **10h00**, or as soon thereafter as the application may be heard, why a final order should not be granted in the following terms:

2.1 That the First Respondent be placed under Final Liquidation; and

2.2 That the costs of this application shall be costs in the Liquidation.

3. A copy of this provisional order is to be served as follows:

3.1 On the Respondent at its principal place of business at 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape;

3.2 On the employees of the First Respondent, if any, at 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape; and at 341 Beyers Naude Drive, Randburg, Gauteng.

3.3 By one publication in each of the *Sunday Times* and *Rapport* newspapers respectively; and

3.4 On the South African Revenue Service, Cape Town at 22 Hans Strijdom Avenue, Cape Town.

4. The Registrar of this Honourable Court shall transmit a copy of this provisional order to the Sheriff of the province in which the registered office of the First Respondent is situated and to the Sheriff of every province in which it appears the First Respondent owns businesses.

5. The Sheriff of this Honourable Court shall attach all property that appears to belong to the First Respondent and transmit to the Master an inventory of all property attached by him or her in terms of section 19 of the Insolvency Act 24 of 1936.

BY ORDER OF THE COURT

Private Bag X9020, Cape Town 8000

2020 -12- 28

WCD-010

COURT REGISTRAR

VEZI & DEBEER INC: YASIN ALLI (REF: YALLI) Yasin@vezidebeer.co.za
3RD FLOOR, EQUITY HOUSE, 107 ST GEORGES MALL, CAPE TOWN, TEL: (012) 361 2746
HC BOX: 763

"FA4"

Final Liquidation

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case No: 19201/2020

BEFORE THE HONOURABLE ACTING JUSTICE DE WET
CAPE TOWN: WEDNESDAY, 30 JUNE 2021

In the matter between:

ANTON FRED MELCHIOR LEE Applicant

and

2021 -06- 30

MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI First Respondent
(Registration Number: 2019/205570/07)
Registered Office at 43 Plein Street, Unit 1
1st Floor, Stellenbosch
Western Cape

FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) Second Respondent

CLYNTON HUGH MARKS Third Respondent

and

ADRIAAN WILLEM VAN ROOYEN N.O. First Proposed Intervening Party
HERMAN BESTER N.O. Second Proposed Intervening Party
CHRISTOPHER JAMES ROOS N.O. Third Proposed Intervening Party
JACOLIEN FRIEDA BARNARD N.O. Fourth Proposed Intervening Party
DEIDRE BASSON N.O. Fifth Proposed Intervening Party

ORDER

Having heard Counsel for Applicant, First and Third Respondents as well as First to Fifth Proposed Intervening Parties;

IT IS ORDERED THAT:

1. The application for the reconsideration of the provisional order in terms of Rule 6(12)(c) is dismissed;

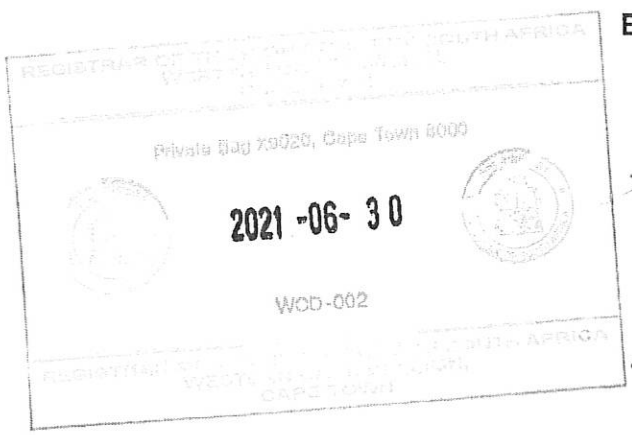
2. The *rule nisi* granted on 29 December 2020, is made absolute and First Respondent is placed under Final Liquidation;

3. The costs of this application, are costs in the administration of First Respondent;

4. The costs occasioned by the intervention of Third Respondent, as taxed on an attorney and client scale, be paid by Third Respondent;

5. The application for intervention by First to Fifth Proposed Intervening Parties as well as their counter application is postponed in terms of an order issued separately from this order for sake of convenience.

BY ORDER OF THE COURT



COURT REGISTRAR

763 Coombe Commercial
c/o Vezi & De Beer Inc
CAPE TOWN

"FA 5"

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO.: **13721/2022**

In the matter between:

H BESTER N.O.	First Applicant
A W VAN ROOYEN N.O.	Second Applicant
C J ROOS N.O.	Third Applicant
J F BARNARD N.O.	Fourth Applicant
D BASSON N.O.	Fifth Applicant
C B S COOPER N.O.	Sixth Applicant

(cited in their capacities as the joint liquidators of

Mirror Trading (Pty) Ltd (in liquidation))

and

THE MASTER OF THE HIGH COURT, CAPE TOWN	Respondent

C H MARKS	First Intervening Party
P R BOTHA	Second Intervening Party
THE EDJ INVESTORS	Third Intervening Party
J A FISHER N.O.	Fourth Intervening Party
R N KHARIVHE N.O.	Fifth Intervening Party

(cited in their capacities as the joint trustees of the Insolvent estate of Cornelius Johannes Steynberg)

This judgment was delivered electronically by circulation to the parties' legal representatives by email on THURSDAY, 9 NOVEMBER 2023.

JUDGMENT

MAHER, AJ

INTRODUCTION

[1] This is the extended return day of an opposed application. The First to Sixth Applicant are cited in their capacities as the joint final liquidators of Mirror Trading International (Pty) Ltd (hereinafter "MTI"). The originally cited sole Respondent is the Master of the High Court, Cape Town.

[2] In terms of an order taken by agreement, and granted by Steyn J on 31 October 2022 the return date of a provisional order, granted on 31 August 2022 was extended to 11 April 2023. The main application was postponed. The order made provision for parties who, as at the date of the order, had applied for leave to intervene to exchange the usual sets of affidavits. The matter was duly set down for hearing on 11 and 12 April 2023.

[3] A total of five parties intervened in these proceedings. The First Intervening Party is C H Marks (The "First Intervening Party" or "Marks"), the Second Intervening Party is P R Botha ("Second Intervening Party"), the Third Intervening Party is a group of investors that refer to themselves as the "EDJ Investors" (and I shall do likewise), the Fourth and Fifth Intervening Party are respectively J A Fisher and R N Kharivhe. The Fourth and Fifth Intervening Parties are cited in their representative capacities as the joint trustees of the insolvent estate of Cornelius Johannes Steynberg. I shall, for the sake of convenience refer to the Fourth and Fifth Intervening Parties collectively as the "Steynberg Trustees".

[4] The Applicant was represented by Mr Terblanche SC, who appeared together with Messrs Lourens and Struwig. The Intervening Parties, in numerical order, were respectively represented by Messrs Alberts, Fürstenberg, Cowley and Smit.

[5] The Respondent, The Master of the High Court, did not participate in the proceedings.

[6] The dispute between the Applicants and the Steynberg Trustees was resolved prior to the hearing as a result of the re-wording of the proposed draft Court Order prepared by the Applicants. The remaining issues, to a greater or lesser extent, remain unresolved, and opposed by the First and Third Intervening Parties.

[7] The Second Intervening Party has withdrawn his opposition. This is recorded in the Second Intervening Party's Practice Note filed on 23 March 2023. The settlement followed upon certain concessions made by the Applicants in their replying affidavit, and the consequential additions and amendments to their proposed draft order, a copy of which was attached to the Applicants' Supplementary Practice Note filed on 10 March 2023.

[8] The Applicants did not object to the intervention of the Second Intervening Party and do not seek a costs order against it. It is also recorded in the Practice Note that the Second Intervening Party had reserved certain rights and these were conveyed to the Applicants. In the circumstances, the Second Intervening Party did not file heads of argument.

BACKGROUND

[9] I consider it unnecessary to deal at great length with the background facts as these are set out in detail in Bester N.O and Others v Mirror Trading International (Pty) Ltd (in liquidation) t/a MTI and Others,[1] a judgment by De Wet, AJ in Case Number15426/2021 read with Case Number 19201/2020 (hereafter referred to as "Bester N.O and Others v Mirror Trading International (Pty) Ltd "). It will serve little purpose to regurgitate the lengthy and complex factual matrix as it is redundant in the circumstances. I shall, accordingly, only deal with the salient background facts to contextualise the application, and to set the *mise en scène* necessary for the proper determination of the issues before me.

[10] The Applicants are the liquidators of MTI. MTI was provisionally wound-up on 29 December 2020 and a final order was granted on 30 June 2020. The Applicants issued this application on 17 August 2022 on an urgent and *ex parte* basis. The rule *nisi* issued by Steyn J on 31 did not immediately come into effect, and its operation was suspended. The Applicants duly complied with the requirements of the provisional order, which included directions as to the publication of the rule *nisi*. The return date was 31 October 2022 and this, subsequently, was extended to 11 April

[1] 15426/2021;19201/2020) [2023] ZAWCHC 83; [2023] 3 All SA 101 (WCC) (26 April 2023).

2023.

[11] Five parties sought to intervene in the application, being the five parties cited herein. There are, effectively, 3 Intervening Parties as the Fourth and Fifth Intervening Parties are cited in their capacities as the joint trustees of the Insolvent estate of Cornelius Johannes Steynberg. The Intervening Parties currently before the Court sought leave to intervene in the main application on 31 October 2022.

[12] The MTI liquidation proceedings are being conducted in terms of the provisions of the Companies Act 61 of 1973 ("the 1973 Companies Act"), the Insolvency Act 24 of 1936 ("the Insolvency Act") and the Companies Act 71 of 2008 ("the Companies Act").

[13] An enquiry into the affairs of MTI was convened, in terms of the provisions of s 417 read with s 418 of the 1973 Companies Act, for the purpose of conducting an investigation into the affairs of MTI. The enquiry was presided over by Judge Fabricius, who was appointed in terms of s 418(1)(a) of the 1973 Companies Act. I shall refer to the enquiry as the "Fabricius Commission". Retired Judge Fabricius issued a total of 4 reports during the course of the enquiry into the affairs of MTI. I shall refer to these reports as the "Fabricius reports".

[14] The findings of the Fabricius Commission and an investigation by the Financial Sector Conduct Authority ("FSCA") were that MTI did not conduct a legitimate business and was established and conducted itself as a fraudulent and unlawful so-called 'Ponzi scheme' and/or a pyramid scheme. The FSCA issued its report on 18 January 2021.

[15] It soon transpired that the liquidation process was going to be a complex process and not a run-of-the-mill winding-up. A number of novel circumstances and issues soon arose that presented the liquidators with difficulties. The liquidators and various of the investors duly sought and obtained legal opinions. These opinions expressed divergent views and the liquidators, notwithstanding their experience and the legal advice they received, have been unable to resolve the issues which arose during the winding-up process, nor could the investors collectively reach an accord with the liquidators.

[16] This impasse is the reason for the Applicants approaching the Court for guidance in terms of s 387(3) of the 1973 Companies Act to obtain directions in relation to the matters that arose during the winding-up process.

[17] The historical backdrop to all of this is that MTI was registered as a private not-for-profit company (NPO) company with limited liability in 2019. It commenced

trading on or about 30 April 2019 and had 2 shareholders, namely Johan Steynberg ("Steynberg") and Clynton Marks ("the First Intervening Party").

[18] MTI initially held itself out to be 'an Internet based crypto-currency club'. It conducted business through a Website. Its official and registered office was located in Stellenbosch, Western Cape. The club members were to benefit by investing in crypto-currency, specifically Bitcoin. The investors Bitcoin investments were purportedly to be 'grown' by way of foreign exchange ("forex") trades, traded via a registered and regulated broker.

[19] The nature of the financial benefits that could accrue to the schemes investors mutated over time, and eventually there were a number of these 'beneficial' categories. The MTI Investment Agreement that constituted the initial investment contract, at the time of MTI's liquidation, purported to provide that the investors' Bitcoin would be 'grown' through forex trading by various registered and regulated brokers. The findings of the Fabricius Enquiry and the FSCA investigation were that the marketing of MTI's business was based on a multi-level marketing ("MLM") or 'pyramid selling' strategy.

[20] In addition to receiving a share of the trading income stream, investors were also purportedly to receive a variety of incentive-based payments for referring new

investors once they became investors, hence the MLM strategy.

[21] The proceeds that an investor could derive from the forex trading profits were regulated by a 'Compensation Plan'. This provided for 5 distinct percentage based income streams, viz. a 40% Members Daily Trading Bonus, a 10% Direct Once-Off Referral Bonus, a 20% Weekly Profit-Sharing Bonus a 2.5% P1 Leadership Bonus and a 2.5% P2 Leadership Bonus.

[22] A number of representations were made to investors and potential investors to lure prospective investors which representations are not relevant for present purposes, save to note that Bitcoin was a common and central feature in these representations. At one stage, MTI represented that it was able to produce positive trading results trading Bitcoin on a daily basis by utilising a unique code compiled by Steynberg, a so-called "bot".[2]

[23] The conduct of the business, which took place over a substantial period of time, is fairly convoluted and complex. However, it is unnecessary to traverse this detail for present purposes. Suffice it to say that members of the public were enticed into investing in the scheme by registering on MTI's Website on the premise

[2] Essentially, a software application programmed to automatically do tasks based on certain instructions without human intervention.

that their investments would yield returns of 0.5% per day and as much as 10% per month or more. The scheme conducted by MTI was advertised as an opportunity to "grow your Bitcoin", hence its central importance in this application.

[24] The gravamen of the Applicants' factual matrix is that MTI's business was at all material times fraudulent and unlawful. During its investigation into the affairs of MTI, the FSCA kept a record of transactions between MTI and each of its investors. This record was saved on a database hosted by Maxtra Technologies in India. The database included information and details of each investor's Bitcoin deposits in the scheme. The relevant details and information obtained from the MTI database were obtained by TCG Digital Forensics CC, who also compiled a report.

[25] The FSCA, in its report released on 18 January 2021, concluded that MTI's business was unlawful and that MTI operated a massive fraudulent and unlawful investment scheme in disregard of financial sector laws, conducted an illegal and unregistered financial services business in contravention of, *inter alia*, section 7 of the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act").

[26] It also emerged at the Fabricius Commission and during the FSCA investigation that the funds purportedly invested were misappropriated. The Fabricius reports leave no doubt that the business activities and practices of MTI were fraudulent and

unlawful for several reasons that need not be elucidated here.

[27] The gravamen of the findings were that MTI, notwithstanding its marketing material, was not an Internet-based crypto-currency club that carried on business for the benefit of its investors by growing the value of the assets invested by way of Forex trades using Bitcoin. Both by FSCA and the Fabricius Commission found that virtually no trading was carried out by MTI. MTI, according to their findings, was, in fact, fraudulently used by Steynberg and his accomplices to defraud the public and the investors and to misappropriate the investors' Bitcoin.

[28] In summary form, the reality is that it was nothing more than a fraudulent scheme. The Fabricius Commission's report includes a finding that the investment contracts were void and in conflict with various laws and that as a consequence the dispositions made by MTI to persons, including investors, constituted impeachable transactions under the Insolvency Act. These findings are consonant with the findings established by the liquidators via their own investigations into the manner in which MTI operated.

[29] In the light of the findings in Bester N.O and Others v Mirror Trading International (Pty) Ltd, a judgment delivered subsequent to the hearing, it is unnecessary for me delve into further details. The Court, per De Wet, AJ, as pointed

out earlier, found that the business model of MTI was illegal and unlawful and that all agreements concluded between MTI and its investors in respect of the trading, management/investment of Bitcoin were declared to be unlawful and *void ab initio*.

[30] As a consequence of the fraudulent scheme, MTI incurred significant liabilities to thousands of investors, which it was unable to pay. A large number of Bitcoin cannot be accounted for. As MTI was unable to pay investors, who sought to withdraw their Bítcoin balances, MTI was wound-up in December 2020. At the date of its liquidation there was a shortfall of no less than 6 900 Bitcoin. A total of 1281 Bitcoin were recovered by the liquidators. The current value of the unaccounted for Bitcoin is approximately R2, 789,787,300.00.

[31] When the FSCA initiated its investigation into the affairs of MTI, MTI transferred all its Bitcoin in the trading pool from FX Choice, apparently its appointed trader at the time, to a different trading platform known as 'Trade 300' which was not a licensed Forex trader. Matters then spiralled out of control and became increasingly complicated and divorced from reality. This convoluted 'death spiral' need not be detailed here and forms the subject matter of ongoing investigation and litigation. It is only necessary to record that the final inevitable demise of MTI followed.

RELIEF SOUGHT AND NATURE OF THE APPLICATION

[32] In essence the application is to obtain directives from this Court in terms of s 387 of the 1973 Companies Act to enable the liquidators to know how to proceed with the winding-up of MTI. One of the directives sought is as to how the liquidators should treat the recovered Bitcoin, which constitute the major asset in the insolvent estate.

[33] The directives sought relate, *inter alia*, to the classification of Bitcoin and how it should be treated in the estate of the liquidated company, how different classes of investors should be classified, how claims against the estate should be prepared and treated, and finally what approach should be taken by the liquidators in respect of claims by the estate against the investors.

[34] It is important to note at the outset that the Applicants seek only directives and not declarative relief in any manner or form. This is an important distinction as the nature of the relief sought by the Applicants appears to be misconstrued by some of the intervening parties and this misconception is the motivating force behind their intervention. It should be noted that the intervening parties make up a tiny minority of the total investors in the scheme.

[35] As indicated earlier, the proceedings were initiated by way of seeking an interim order. The relevant[3] relief sought, in its original form and as set out in the Notice of Motion, is the following:

> *"2. That the applicants be permitted to prosecute this application on an ex parte basis.*
>
> *3. That a rule nisi ("the provisional order") in the following terms be granted:*
>
> *3.1 The liquidators should treat Bitcoin ("BTC") in the estate of Mirror Trading International (Pty) Ltd ("the Company") as intangible assets that constitute "property" as defined in section 2 of the Insolvency Act, 24 of 1936 ("the Insolvency Act");*
>
> *3.2 The liquidators, in dealing with claims by and against those who deposited BTC with the Company, are required to take specific cognisance of the following classes of Investors in the so-called investment Scheme operated by the Company ("the Scheme"):*

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[3] Prayer 1 is excluded as it was simply to seek leave to have the matter dealt with on an urgent basis and was couched in the usual terms. I have also excluded the prayers dealing with service and notification as they are irrelevant for present purposed.

3.2.1 *The first class of investors are those individual who invested in the Scheme, but who did not receive anything- i.e. zero in return ("Class 1 Investors");*

3.2.2 *The second class of investors are those individuals who invested in the Scheme and who, although having received a return on their investment, received less than what they invested in the Scheme ("Return" and "Class 2 Investors"). These investors, although having received a Return, did not profit from the Scheme; and*

3.2.3 *The third class of investors are those individuals who invested in the Scheme and who received returns that exceed the amount of capital invested in the Scheme, thereby profiting from being participants in the scheme ("Profit" and "Class 3 Investors");*

3.3 *Those individuals who deposited BTC with the Company and who intend to submit claims in the winding-up of the Company and prove same as contemplated by section 44 of the Insolvency Act,*

are required to submit their claims with the Company in Rand value;

3.4 In the event that the investment agreements concluded by and between the Company and Investors are void ab initio as a consequence of the alleged illegality of the Company's business ("the first scenario"), then:

3.4.1 In relation to Class1 Investors:

3.4.1.1 Class1 Investors should be permitted to submit a claim against the estate in an amount equal to their investment in the Scheme;

3.4.1.2 the value of a Class 1 Investors' investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;

3.4.1.3 insofar as their claims are properly proved in compliance with section 44 of the Insolvency Act, their claims should be accepted by the Liquidators;

3.4.2 In relation to Class 2 Investors:

3.4.2.1 they will have to account towards the estate for any Return(s) on their so-called investment(s) in the Scheme;

3.4.2.2 the Liquidators must ensure that the Returns are taken into account and subtracted from the investments made by the Class 2 Investors into the Scheme, so that those Returns may ultimately be applied in reduction of their claims against MTI;

3.4.2.3 Class 2 Investors should be permitted to submit a claim against the estate in an amount equal to their impoverishment or the Company's enrichment, whichever is the lesser, which is in turn to be quantified by subtracting the properly quantified Return(s) from the properly quantified investment(s) of the relevant Investor(s), the result of which will represent either one or both of the Investors' impoverishment or the Company's

enrichment;

3.4.2.4 *the value of a Class 2 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;*

3.4.2.5 *the value of a Class 2 Investor's Return should be calculated in Rand value, as at the date upon which the relevant Return or portion thereof was paid by the Company to the relevant investor;*

3.4.2.6 *to the extent that a Class 2 Investor submits a claim in the estate that complies with section 44 of the Insolvency Act, that represents the Rand value of the lesser of that Investor's impoverishment or the Company's enrichment, in a manner that corresponds with the Liquidators' independent assessment, such claims should be accepted by the Liquidators;*

3.4.2.7 the Liquidators will remain vested with claims against the Class 2 Investors for repayment of the Returns, in terms of sections 29 and 30 of the Insolvency Act, despite the fact that a Class 2 Investor's claim may have been reduced to account for the same Return when that Investor proved a claim in the estate, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.2.8 the Liquidators may then pursue the Class 2 Investors in respect of the Returns, in terms of either section 29 or 30 of the Insolvency Act;

3.4.2.9 when a Return paid to a Class 2 Creditor is set aside by a Court in terms of section 29 or 30 of the Insolvency Act, that Return [in whatever form contemplated by section 32(3) of the Insolvency Act] will be repaid/returned to the estate, to form part of the assets available for ultimate distribution to the creditors in the form of a dividend;

3.4.2.10 in such event, the Class 2 Investor concerned should be afforded an opportunity of proving an additional claim against the estate, in relation to the Return in question;

3.4.3 In relation to Class 3 Investors:

3.4.3.1 Class 3 Investors will initially not have a claim against the Company;

3.4.3.2 The Liquidators will be vested with claims against Class 3 Investors premised:

3.4.3.2.1. On section 26 of the Insolvency Act, in terms of which the Liquidators can reclaim the Profit(s) transferred by the Company to Class 3 Investors, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.3.2.2. On sections 29 or 30 of the Insolvency

Act, on the very same basis that they have claims against the Class 2 Investors under these sections, provided that the jurisdictional requirements of those sections can be satisfied;

3.4.3.2.3. *On section 31 of the Insolvency Act in the case of those individuals who colluded to dispose of the property belonging to MTI in a manner which had the effect of prejudicing its creditors or of preferring one of its creditors above another.*

3.4.3.3 *The value of a Class 3 Investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made their investments in the Scheme;*

3.4.3.4 *The value of a Class 3 Investor's reimbursement in*

respect of their initial investment and/or the Profit should be calculated in Rand value, as at the date upon which the relevant creditor(s) received same from the Company;

3.4.3.5 *Claims submitted by Class 3 Investors, prior to the finalisation of the Liquidators' claims that are to be instituted in terms of sections 26 and 29 or 30 and/or31 of the Insolvency Act, should be rejected;*

3.4.3.6 *The Liquidators may pursue the Class 3 Investors in respect of all transfers made to these Investors by the Company, including in respect of the Profit(s), in terms of section 26 and 29 or 30 and/or 31 of the Insolvency Act, provided that the jurisdictional requirements of those sections can be satisfied;*

3.4.3.7 *The Liquidators, once successful in procuring the return of the subject disposition(s), should*

thereafter allow the affected Class 3 Investors a further opportunity to prove a claim in the estate, arising from the Company being re-vested with their initial investment into the Scheme, but not the Profit;

3.4.3.8 *The Liquidators should not permit any claim in terms of which Profit is claimed from the estate- such a claim will in the circumstances be statutorily excluded in terms of section 26(2) of the Insolvency Act.*

3.5 *In the event that the investment agreements concluded by and between the Company and Investors are not void ab initio ("the second scenario"), then:*

3.5.1 *Investors will in the Second Scenario acquire the status of a creditor of the Company on a contractual basis and the Liquidators are vested with claims against Investors in the Second Scenario based on section 29 or section 30 of the Insolvency Act, provided that the jurisdictional*

requirements of those sections can be satisfied;

3.5.2 *claims submitted by Investors should be admitted insofar as they comply with section 44 of the Insolvency Act, provided that such claims are properly formulated and proven;*

3.5.3 *claims submitted by Investors should be calculated in Rand value as at the date of liquidation, and such claims are to represent the available balance of the relevant investor's investment(s) in question after taking into account "Bitcoin in and Bitcoin out";*

3.5.4 *the Liquidators may then pursue the Class 2 Investors in respect of the Returns, and the Class 3 Investors in respect of their initial investments and the Profits, transferred to them by the Company, in terms of either section 29 or 30 of the Insolvency Act, provided that the jurisdictional requirements of those sections can be satisfied;*

3.5.5 *the Liquidators, once successful in procuring the return of the subject disposition(s), should permit such Investors to prove a further claim in the estate, arising from the Company being re-vested with such dispositions concerned;*

3.6 *In relation to individuals that defrauded MTI itself, they will not have any claims against the Company emanating from such conduct and that the Liquidators are vested with a cause of action against these individuals premised on section 26 and likely also section 31 of the Insolvency Act, to reclaim dispositions to these individuals by the Company, when and where the circumstances so permit.*

4. *That the provisional order shall be of no effect, until and unless confirmed by this Honourable Court, in whole, part or in an amended form, on the return date.*

5. *That any person with an interest in this application and/or the provisional order, be called upon to show cause on a date to be determined by this Honourable Court, as to why the provisional order, or any part thereof,*

should not be made final.

6. ....

....

9. *That the costs of this application form part of the costs in the winding up of the Company, save in the event of it being opposed, in which event the applicants will pursue an order that any opposing party pay the costs of this application on the scale as between attorney and client, including the costs consequent upon the employment of two counsel where so employed.*

10. Such further and/ or alternative relief as may be required."

[36] Pursuant to the issue of the rule *nisi*, the Applicants filed numerous affidavits by Herman Bester N.O. Craig Lionel Pedersen, Adriaan Willem Van Rooyen, Christopher James Roos, Jacolien Frieda Barnard, Deidre Basson and Chavonnes Badenhorst St Clair Cooper in support of their application. As is apparent from the background details, several parties intervened after the rule *nisi* was published and voluminous opposing papers were filed by the intervening parties. As a result the

record consists of almost 2000 pages.

[37] One of the reasons for the Applicants seeking directions is so that they can adopt a uniform approach in respect of the claims against the liquidated estate by the various investors. It is apparent that there are wide-ranging disputes between the investors, classes of investors and individual investors.

[38] I am satisfied that as the parties were unable to resolve their differences and the Master of the High Court declined to provide directions, the Applicants' have made out a proper case to approach this Court for directives to enable the liquidators of MTI to deal with the various claims lodged against MTI's insolvent estate.[4]

[39] Directives are necessary in respect of how the liquidators should treat Bitcoin in the administration of the estate, the approach to be adopted in respect of the treatment of claims by each of the separate classes of investors and the manner in which the claims, in terms of the Insolvency Act 24 1936, by the liquidators against what are labelled the Class 2 and Class 3 investors, should be dealt with by them.

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[4] Section 387(3) of the Companies Act provides that, "Where the Master has refused to give directions as aforesaid or in regard to any other particular matters arising under the winding-up, the liquidator may apply to the Court for directions."

[40] It is important to re-iterate that relief sought will not impact on the litigation currently pending between the liquidators and various parties, who received dispositions from MTI, nor the litigation between the liquidators and parties who were involved in MTI, such as the First Intervening Party, Marks.

[41] The nature of the relief sought is not dispositive of the extant dispute(s) between the liquidators and the Steinberg Trustees in respect of the ownership of Bitcoin that the liquidators received from FX Choice. This much should be stating the obvious but it appears to be a central concern to the Intervening Parties.

[42] Only the First Intervening Party, Marks and the Third Intervening Party, EDJ Investors, oppose the current application, notwithstanding that there were thousands of investors who invested in the scheme.

[43] The EDJ investors filed opposing affidavits and also seek the dismissal of the application, albeit they do so on limited grounds. The Steynberg Trustees, on the other hand, do not seek that the application be dismissed. The Trustees only sought a qualification of the wording of subparagraph 2.1 of the provisional order. The Applicants were amenable to the amendment sought by the Steynberg Trustees and effected the necessary amendments to the satisfaction of the Trustees.

[44] The First Intervening Party, Marks holds a 50% shareholding in MTI. He was its *de facto* director and, so it is alleged, was personally involved in what may amount to fraudulent and/or reckless business practices committed by MTI and the Second Intervening Party, Botha.

NATURE OF THE RELIEF SOUGHT BY WAY OF DIRECTIVES

[45] The first directive sought by the Applicants is the classification of Bitcoin. Their proposal is that Bitcoin in the insolvent estate of MTI should be classified as intangible assets that fall within the definition of "property", as defined in s 2 of the Insolvency Act.

[46] The Applicants' draft order, in its amended form, makes it clear that there is no judicial pronouncement or 'judgment' as regards ownership of the Bitcoin which the Applicant's received from FX Choice. Furthermore, the order is sought in terms that all Bitcoin is to be regarded as intangible assets that constitute property. This would include Bitcoin received from investors and Bitcoin re-transferred to investors, and any Bitcoin that is subject to claims by the liquidators against the recipients of dispositions in terms of ss 26 to 31 of the Insolvency Act. This relief is only opposed by the First Intervening Party.

[47] The second directive relates to the claims by the different classes of investors i.e. Class 1, 2 and 3 investors as set out and described earlier.[5] The Class 1 investors received no returns, the Class 2 investors did receive returns, albeit less than what they invested and the Class 3 investors profited from the scheme and received more than they invested.

[48] The directives sought in respect of the Class 1 investors is less complex than in respect of the Class 2 and Class 3 investors. The Applicants, nonetheless, regard a directive as being of importance for the purpose of quantifying the claims by the claims of the Class 1 investors in the winding-up of the estate of MTI. The directive in respect of the Class 1 investors appears to be uncontentious.

[49] The Third Intervening party, EDJ investors, dispute the correctness or appropriate of the proposals put forward by the Applicants as to how these 3 classes of investors' claims should be treated.

[50] The third directive sought relates to the Class 2 investors. Guidance as to the initial quantification of this class of investors is the same as that sought in respect of the Class 1 investors. The Applicants also seek guidance on the proper approach

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[5] In paragraph 35, *supra*, dealing with the content of the Notice of Motion in its original form and specifically sub-paragraphs 3.2.1 to 3.2.3 thereof.

to apply in respect of the returns to the Class 2 investors in quantifying their claims as against the estate of MTI.

[51] The EDJ investors and the Applicants hold different views as regards the form of the directives sought by the Applicants.

[52] The fourth directive relates to the Class 3 investors who profited from the scheme. The First, Second, Fourth and Fifth Intervening Parties are all Class 3 investors, who overall benefited from their investments in the scheme.

[53] The fifth directive sought is whether claims should be submitted for the number of Bitcoin invested in the scheme or the Rand value of the investments. This directive will effect all the investors in the scheme.

[54] The sixth category of directives sought will only apply if a Court ultimately determines that the investment agreements concluded between MTI and the investors are not void *ab initio*. At the stage when these six category of directives were sought, a Court had yet to pronounce whether the investment agreements were *void ab initio* or not and the application had been argued and judgment thereon reserved.[6] This has changed and, as already pointed out on several occasions,

[6] Although the Fabricius Commission and the FSCA had made such a finding.

judgment was handed down in Case Numbers 1546/2021 read with 19201/2020 *sub nom* Bester N.O and Others v Mirror Trading International (Pty) Ltd on 26 April 2023. The Court, per De Wet, AJ held that all the agreements concluded between MTI and its investors were unlawful and void *ab initio*.

[55] While it is, therefore, strictly speaking not necessary to provide guidance in respect of the sixth category, I shall nonetheless deal with it and make provision for the possibility of this scenario coming to pass in the order as, ultimately, a Court, albeit unlikely, may hold that the investment agreements are not void *ab initio*. It, therefore, seems prudent to not exclude the directive based on this scenario merely because a Court of first instance has adjudged the agreements to be void *ab initio*. It is beyond the scope of the present enquiry to even venture into this territory and I refrain from doing so, save to point out that it is an unlikely event.

[56] None of the Intervening Parties have, in any event. taken issue with the directives sought in this regard.

[57] The seventh category of directives sought relate to persons who defrauded MTI. There appears to be no opposition to the inclusion and phrasing of the proposed directive sought in respect of this last category by any Intervening Party.

[58] I now turn to deal with the opposition to the directives sought by the Applicants.

GROUNDS OF OPPOSITION BY FIRST INTERVENING PARTY

[59] The First Intervening Party, Marks, raised several objections, one of which was that this Court lacks jurisdiction to hear the matter.

LACK OF JURISDICTION

[60] The contention by Marks that this Court has no jurisdiction to hear the matter is readily disposed of as it has no merit. Section 387(3) of the 1973 Companies Act provides, in express terms, that where the Master of the High Court has refused to give directions (which is common cause is the case) arising under the winding-up, application may be made to "the court" by the liquidators for directions as to how to proceed. The provisional and final winding-up orders in respect of MTI were granted in this Division of the High Court and it follows that this is "the Court" that has the necessary jurisdiction to give directions.[7]

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[7] Henochsberg, op cit Vol 2, APPI-200(1); See also: the definition of "court' in section 1 of the Companies Act.

[61] The registered address of MTI is also within the area of jurisdiction of this Division of the High Court. It is situated at 43 Plein Street, Unit 1, Ground Floor, Stellenbosch, Western Cape, which is an additional ground to establish jurisdiction.

[62] For reasons which follow, I am also of the view that cryptocurrencies such as Bitcoin is a movable intangible asset. Bitcoin is an asset with no link to any particular place, and its situs must accordingly follow the domicile of a person, usually this would be the owner. Bitcoin cannot have a location being incorporeal and digital, located as it were in 'cyberspace'. It must also be borne in mind that Bitcoin is essentially a blockchain i.e. record of transactions maintained across computers that are linked in a peer-to-peer network located anywhere in the world.

[63] As Bitcoin is a movable asset with no specific or identifiable location it must follow the domicile of the owner of the asset as no other party is involved.
This led to a specific amendment to the regulation to include intellectual property in the definition of "capital". However, it appears incorrect to categorize a crypto asset as immovable, as we know that unlike a share register or a trademark register, a crypto asset's record of ownership exists in the blockchain, which does not have a physical location. Ergo, the Bitcoin must be regarded as situated within the jurisdiction of this Court as it is deemed to be located at the registered address of the owner, MTI.

[64] As this Court is clearly vested with jurisdiction on more than one ground it has the necessary jurisdiction to hear this application, and the objection as to a lack of jurisdiction has no merit.

REMAINING GROUNDS OF OPPOSITION

[65] The First Intervening Party objects to the content of prayer 1 of the proposed draft order that Bitcoin should be treated as an intangible asset that is "property" as defined in s 2 of the Insolvency Act. The objection is that the effect of prayer 1, if it is made an order of court, will render ineffective one of his primary legal defences apropos his involvement in MTI and disagreement that it was a "Ponzi scheme".[8] The argument posited is that if a directive is granted that Bitcoin *should be treated as intangible assets and regarded as property for the purposes of the winding-up* cannot, in my judgment, conceivably impact adversely on any defence or avenue of attack he may choose to raise in any legal proceedings. It is simply not so that a directive will render moot any position or view held contrary to the terms

[8] A Ponzi scheme, so named after Italian businessman Charles Ponzi, is a form of fraud where investors are lured into an 'investment' scheme, usually with promises of unrealistic returns and pays profits to earlier investors with funds from subsequent investors. This deception of 'robbing Peter to pay Paul' is what misleads investors by either falsely suggesting that profits are derived from legitimate business activities when there are no such legitimate business, or by exaggerating the extent and profitability of the legitimate business activities, thereby enticing new investments to fabricate or supplement these alleged profits.

of a directive issued for the purpose of ensuring the effective and orderly winding-up of MTI.

[66] I am of the view that there is no merit to the Mark's contentions as that will not be the effect of prayer 1. The classification is simply to enable the liquidators to know how to deal with the Bitcoin in winding-up the insolvent estate. The relief sought is in the form of a directive.[9] It is neither a finding, nor dispositive of the classification of Bitcoin and whether or not it is to be regarded as "property" in terms of the Insolvency Act.

[67] The importance of a finding that Bitcoin is not "property" as defined in the Insolvency Act is that ss 26, 29 a 30 of the Insolvency Act would then find no application.[10] The proposed directive is not determinative of this issue at all. In the event that the liquidators invoke ss 26, 29 and 30 it will be open to any party to oppose the relief sought on the basis that these sections find no application and it will be for the Courts seized with such applications to make findings in this regard. The directive is, at best, a neutral consideration and, in my view, falls short of even

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[9] In order to avoid repetition and unnecessarily burdening what is already a lengthy judgment, I shall deal with this aspect in detail below as it is relevant in respect of all the objections raised by the Intervening Parties.

[10] These provisions respectively deal with voidable preferences, undue preference to creditors and collusive dealings for sequestration.

this.

[68] The First Intervening Party oppose the relief sought in prayer 3.1 of the Notice of Motion[11] and contends that the classification of Bitcoin and whether it is property as defined in the Insolvency Act should not be determined by way of seeking a declaratory order. This objection, again, is premised on the incorrect assumption that the Applicants seek declaratory orders. As I shall demonstrate later, this is based on a misconception of the foundational statutory provision relied upon by the Applicants in bringing this application. The First Intervening Party misconstrues the legal nature of directions or directives that a Court may give in terms of s 387(3) of the 1973 Companies Act.

[69] As regards the relief sought in prayer 3.2, the contention is that this forms part of the dispute between the liquidators and various other interested parties under Case Number 15426/2021. The objection is thus a plea of *lis pendens*. It is unnecessary to consider this objection as, at the time this matter was argued, the objection may have had merit (a point I am no longer required to decide) as judgment in Case Number 15426/2021 was reserved. The judgment, Bester N.O and Others v Mirror Trading International (Pty) Ltd, has since been delivered and it was handed down on 26 April 2023, and *cadit quaestio* as there is no pending *lis*.

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[11] The relief sought in the Notice of Motion is set out in paragraph 35, *supra*.

[70] It follows that this ground of objection is rendered moot by the delivery of the judgment.

[71] I shall deal with the classification is due course and in doing so will provide additional grounds and reasons as to why the objections cannot be upheld.

GROUNDS OF OPPOSITION RAISED BY THE THIRD INTERVENING PARTY: EDJ INVESTORS

[72] The Third Intervening Party persist with their opposition to the application and specifically oppose the relief sought in respect of the Class 1 and 2 investors that a) the value of the Class 1 investors' investments in the scheme should be calculated in South African Rand and b) be determined on the date of investment and that the value of Class 2 investors' investment in the scheme should be calculated on the date of investment.

[73] The EDJ Investors are classified into 3 Classes and they variously object to certain of the relief sought by the Applicants on the following paraphrased bases:

1. *The application is premature as there is yet to be a determination in Case*

Number 1546/2021 as to whether the MTI scheme is an unlawful pyramid scheme.

2. *The terms of the order 'intends' to limit their claims in the insolvent estate to liquidated claims only.*

3. *The Class 1 investors object to prayer 2.4.1.2,1 and its proposal to calculate the claims of the Class 1 investors "in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme"; and*

4. *The Class 2 investors object to:*

   4.1 *Prayer 2.4.2.4 and the proposal that the claims of the Class 2 investors should be calculated in Rand value, as at the date of investment; and*

   4.2 *prayers 2.4.2.7 to 2.4.2.10, as they provide that even though "Returns" received by the Class 2 investors must be deducted from their claims, the Applicants reserve a right to claim the repayment of the Returns from the Class 2 investors, as voidable or undue*

preferences, as contemplated in ss 29 and 30 of the Insolvency Act 24 of 1936 ("the Insolvency Act"). The Class 2 investors allege this is objectionable and inherently unfair as if this is allowed they would have to deduct the Returns from their claim and pay it back.

AD THE FIRST OBJECTION

[74] The first objection raised by the EDJ Investors, namely that this application is premature as no determination has been made in the pending case, Case Number 1546/2021, as to the unlawfulness or otherwise of MTI and whether it is a pyramid scheme is again readily disposed of. As indicated variously, judgment[12] in the matter was handed down by De Wet, AJ on 26 April 2023. De Wet, AJ issued the following order:[13]

"1. The business model of Merit Trading International (Pty) Ltd (in liquidation) ("MTI") is declared to be an illegal and unlawful scheme.

2. All agreements concluded between MTI and its investors in respect of the trading/management/investment of bitcoin for the purported benefit

[12] Bester N.O and Others v Mirror Trading International (Pty) Ltd.

[13] I have only quoted the relevant portions of the Order.

of investors, are declared unlawful and void ab initio."

AD THE SECOND OBJECTION

[75] The objection is that the terms of the order 'intends' to limit their claims in the insolvent estate to liquidated claims only. This objection is also premised on a misinterpretation of the relief sought and the form thereof. I, once again, to avoid repetition shall deal with this aspect in due course.

AD THE THIRD OBJECTION

[76] The commonality between the Class 1 and 2 investors is that they suffered a net loss by investing in the scheme. The Class 3 investors are the only ones who financially benefited from the scheme.

[77] The EDJ Investors, so it was argued by Mr Cowley, are entitled to the return of the Bitcoin which they re-invested or invested depending how you phrase it, and not the value thereof. He gave the examples of non-monetary assets such as motor vehicles and a farm tractor *et cetera* and relied on this to argue that such investors were entitled to the return of items and not their monetary value. It is only if the assets no longer exist that a claim is submitted for its value.

[78] This argument is premised on the fact that the Bitcoin can be identified and linked to a specific 'owner' when there was, so everyone was led to believe an 'investment pool' that was actively traded. Secondly, most of the Bitcoin is unaccounted for an therefore no longer exists. It is open to an investor to claim specific ownership should they choose to do so, but the issue may then have to be litigated. Thirdly, the scheme was fraudulent and there was no Bitcoin-based investment scheme. Fourthly, the agreements were void *ab initio* before any fiat currency i.e. Rands were 'converted' into Bitcoin.

[79] The argument is also premised on what was described as a "declaration" issued on 19 October 2022 by the FSCA that crypto-assets should be deemed to be assets comprising a "digital representation of value". The submission was that this definition should be followed as it is authoritative, having been made by the designated authority on the regulation and conduct of financial matters. The final part of the submission was that, following on this definition by the FSCA, Bitcoin did not constitute property as defined in the Insolvency Act based on the FSCA's deeming Bitcoin to be merely a "digital representation of value".

[80] The objection was, accordingly, that the relief sought in prayer 3.1 is in conflict with a Notice issued by the FSCA in terms of the FAIS Act. In the Notice,

which also declares cryptocurrency to be a financial product, crypto asset is defined as follows:

> *"'Crypto asset' means a digital representation of value that -*
>
> *(a) is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment and other forms of utility;*
>
> *(b) applies cryptographic techniques; and*
>
> *(c) uses distributed ledger technology."*[14]

[81] The first observation is that parts (a) and (b) of the definition essential describe an intangible property. A cryptocurrency is also described as an "asset". An asset is axiomatically property of some sort. If anything, my interpretation on the plain meaning of the words is that the FSCA's Notice defines cryptocurrencies as movable, intangible property (movable because of the nature of Blockchain and Bitcoin not being located in a physical place). The Notice is also compatible with media releases issued by SARS. By way of example, on 6 April 2018 SARS issued

[14] See: Government Gazette Notice 1350 dated 19 October 2022.

a media release that deals with the fiscus's stance on the tax treatment of cryptocurrencies and reads thus:

> *"SARS will continue to apply normal Income Tax rules on Cryptocurrencies and will expect affected taxpayers to declare Cryptocurrency gains or losses as part of their taxable income...SARS for Income Tax purposes classifies Cryptocurrencies* ***as assets of an intangible nature****. Whilst not constituting cash, Cryptocurrencies can be valued to ascertain an amount received or accrued as envisaged in the definition of "gross income" in the Act. Following normal income tax rules, income received or accrued from Cryptocurrency transactions can be taxed on revenue account under "gross income". Alternatively, such gains may be regarded as capital in nature as spelt out in the Eighth Schedule of the Income Tax Act for Taxation under Capital Gains."*
>
> (My emphasis)

[82] From the above it is apparent that the existing tax laws on 'normal' tax apply to cryptocurrencies in South Africa.

DATE OF DETERMINATION INVESTMENT OR DATE OF CONCURSUS

[83] The argument or objection continues along the lines that if the Bitcoin could

not be recovered and returned then the value of the Bitcoin should be assessed as at the date of the *concursus*. It was, however, conceded that if this were to be applied, then the returns received by the Class 2 and 3 Investors should be taken into account. The argument continued that fairness dictates that to avoid the anomalies arising from these classes of investors having to account for the return on their investment, the date of assessing their loss should be the date of the *concursus*.

[84] The unfairness, it was argued, was that the result would otherwise be that the Class 2 and 3 investors would be required to pay back in full what they received and then so-to-speak stand in the queue and only receive payment of a dividend down the line. In this regard, the objection was that the proposed draft order resulted in unfairness. I am not sure on what basis this can be construed as unfair as this is the manner in which all creditors are treated in insolvency in similar circumstances. There is an accounting, a pooling and a distribution, and far from being unfair, the result is that save for the exceptions, the ordinary creditors are treated equally and as fairly as the circumstances allow. There are, after all, only losses suffered by creditors in any liquidation or sequestration.

[85] The Class 1 investors object to their claims being translated into a Rand value that is determined on the date of their investment in the Scheme.

[86] However, as Bitcoin is a cryptocurrency i.e. a form of digital money which is not a physical substance and has no physical attributes, its value clearly has to be and should be determined in the form of a fiat currency. The sole purpose of a cryptocurrency is, after all, for the exchange of value, and cryptocurrencies, which includes Bitcoin, have limited functionality, if any, beyond that. The obvious currency to determine the value of Bitcoin in the insolvent estate is in South African Rands. All these investors concede that Bitcoin is 'property' and has value, albeit that it is not accepted that it is property that falls within the definition of s 2 of the Insolvency Act.

[87] The EDJ Investors contend that the date on which the claim for Bitcoin deposited with MTI should be quantified on the date of the liquidation i.e. on the date of the *concursus*, being 23 December 2020. They, accordingly disagree with the Applicants' contention that the valuation of the Bitcoin should be determined as at the date of investment.

[88] In my view, as the agreements were void *ab initio* and the scheme illegal, the date of valuation should indeed be the date of investment. This is also in line with the Insolvency Act and its provisions and the whole notion underpinning the statutory establishment of a *concursus*.

[89] Moreover, as was pointed out by the Applicants in their supplementary heads of argument and in argument, to determine the value as at the date of *concursus* results in a number of anomalies and unequal treatment of the creditors of the insolvent estate.

[90] To my mind it is untenable that the quantification of the creditors claims can be subjected to the vagaries of the market and turn on the establishment of a value by way of what effectively is a lottery based on the market value of Bitcoin on any given day. The investors chose to invest on a specific date and that was a deliberate choice. They could immediately have reclaimed their investment as the agreements were void *ab initio*. The correct approach is to give effect to the law. The fallacy in the EDJ Investors argument immediately becomes apparent if the value of Bitcoin on the date a particular investor happened to invest was higher than at the date of the *concursus* the contrary argument doubtless would be put forward. A pragmatic, workable and fair approach is appropriate and that, in my judgment, on the facts of this matter, would mean that the date to determine value is to use the actual date of investment as that is the amount the investor actually parted with and intended to 'invest'. This is the way to ensure that the general body of creditors is taken into consideration and not the individual investor's considerations.

[91] In Walker v Syfret[15] Innes CJ articulated the basic foundational principle in the law of insolvency, saying the following:

> *"The object of the Insolvent Ordinance is to ensure a due distribution of assets among creditors in the order of their preference. And with this object all the debtor's rights are vested in the Master or the trustee from moment insolvency commences. The sequestration order crystallises insolvent's position; the hand of the law is laid upon the estate, and at once the rights of the general body of creditors have to be taken into consideration. No transaction can thereafter be entered into with regard estate matters by a single creditor to the prejudice of the general body. The claim of each creditor must be dealt with as it existed at the issue of the order."*

[92] The principle aim and purpose is to facilitate a collective debt collecting procedure that ensures fairness and an orderly distribution of the debtor's assets to its creditors where it is insolvent in the form a distribution of a dividend. Upon the liquidation of a company by a Court, a *concursus creditorum* is established, retrospectively to the date upon which the application for its liquidation was

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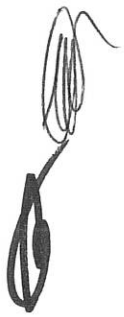
[15] 1911 AD 141 at 166.



presented.[16] Each investor had a claim against MTI on the date of investment as the investment agreements were void *ab initio* and all the *concursus* does is lay the hand of the law on the estate at that point so that claims may be submitted to the insolvent estate for consideration. The claim then arises as against the insolvent estate not MTI as it is in liquidation. The value of the claim cannot be conflated with the date the claim lies against the insolvent estate.

[93] The *concursus creditorum* is conceptually premised on giving preference to the rights of creditors as a group and not to prefer or advance the rights of individual creditors. It follows axiomatically that unfairness and a notion of 'winners' and 'losers' is anathema to the very concept and legal structures and procedures put in place to ensure an orderly winding-up procedure. As a consequence of the *concursus creditorum* and the rights of every creditor being accounted for, there are only 'losers' but these losses are shared on an equitable basis.

[94] As regards the position they adopt that they should not be limited to claiming under the *condictio* but should also be allowed to seek damages. If it should transpire that the investment scheme is legitimate at some future date (at present the opposite applies in light of the findings by De Wet, AJ), then these 'investors'

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[16] In terms of s 348 of the 1973 Companies Act. See, also: Rennie v SA Sea Products Ltd, 1986 (2) SA 138 (C); Thomas Construction (Pty) Ltd (in liquidation) v Grafton Furniture Manufacturers (Pty) Ltd, 1988 (2) SA 546 (A) at 566.

are covered in this regard in light of the terms of the proposed draft order. As was pointed out by Mr Terblanche for the Applicants, if these investors wish to claim in delict or enrichment, it is open for them to do so and the relief sought by the Applicants places no restrictions on damages being sought in delict should any party wish to institute proceedings on this basis.

[95] It is for the above reasons that the objections raised by the Class 2 investors also cannot be accepted.

REMAINING ISSUES FOR DETERMINATION

THE NATURE AND LEGAL CLASSIFICATION OF BITCOIN

[96] The first issue in respect of which directions were sought was how the liquidators should treat Bitcoin. The Applicants' view is that Bitcoin should be treated as intangible assets in the estate of MTI that constitute "property" as defined in s 2 of the Insolvency Act.

[97] I shall first deal with the classification of Bitcoin and then the issue as to whether it constitutes 'property' as defined in s 2 of the Insolvency Act. I shall then conclude with a general commentary apropos the objections raised by the Intervening Parties which considerations apply across the board to their objections and to which I have alluded to earlier in the judgment.

THE NATURE AND CLASSIFICATION OF BITCOIN

[98] Cryptocurrencies, such as Bitcoin, are digital currencies generated by cryptographic algorithms. These virtual currencies can be defined as decentralised peer-to peer payment systems that are a digital representation of value and which is capable of being transferred, stored and traded in an electronic form.

[99] The Oxford English Dictionary defines 'cryptocurrency' as '*a digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank*.'

[100] In essence, cryptocurrency is notionally nothing but a limited entry on an electronic database that is unalterable to ensure it is secure, it can only be altered if specific conditions are fulfilled. A cryptocurrency, including Bitcoin has no physical attributes, being entirely digital and made up of strings of bits that make up bytes constituting electronic 'data in a binary form' with a specific function and purpose.

[101] Cryptocurrency is not, however, akin to electronic instances of cash, such as on online bank account held with a consumer bank that is linked to a

physical fiat currency. An online bank account only displays an amount in a fiat currency that is held in a specified bank account. By contrast, cryptocurrency refers to a form of exchange that only exists digitally and is not linked to any physical or fiat currency.

[102] It is thus apparent that Bitcoin is not a fiat currency and not money as traditionally understood. Its intended purpose is, nonetheless, to create an alternative to traditional money, free of regulation and any form of intervention by, for example, a central bank, in the form of cryptocurrency that is readily tradeable and usable as commercial currency that is also secured. In my view, the closest analogy to Bitcoin is money, albeit that it does not have a physical form. It has most of the other traditional characteristics of money and 'money' is frequently used in a non-physical form, such as credit card payments, EFT payments etc where no physical money is ever used an electronic 'ledger' entries are effected to reflect the account balance.

[103] It so happens that SARS uses the phrase 'assets of an intangible nature' to categorize Cryptocurrencies when it comes to taxation of these currencies. Cryptocurrencies are, not however, accepted as official South African tender.

[104] It is by now trite law that intangible property generally includes assets

located in an account, monies, and items which are not physical. It is, however, a common misconception that since money is physical, it is a tangible asset.

[105] Cryptocurrencies, including Bitcoin are a form of digital money and they have no physical substance, but unarguably it has value notwithstanding that Bitcoin only consists of what is known as Blockchain, essentially an immutable 'electronic ledger' with transactions involving Bitcoin being maintained across computers that are linked in a peer-to-peer network.

[106] In Ruscoe v Cryptopia Ltd (in Liquidation)[17] the New Zealand High Court relied on Lord Wilberforce's opinion in the House of Lords in the English case of National Provincial Bank Ltd v Ainsworth,[18] where he said:

> *"Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability."*

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[17] [2020] NZHC 728.

[18] [1965] AC 1175 (HL) at 1247–1248.

[107] There are all aspects or characteristics that may be attributed to digital assets which would include cryptocurrencies, digitised audio-books, films and music that resemble corporeal moveable property, tangibility or intangibility generally determines whether property is to be regarded as corporeal or incorporeal and intangible property can best be equated to incorporeal property in South African law. Digital assets can therefore be identified under the category of incorporeal moveable property.

[108] An owner of Bitcoin has rights pertaining to this form of property, it is well-defined and understood as an asset, can readily be transferred or used as it has value and exists permanently in an immutable digital form in the form of a Blockchain. Bitcoin, accordingly, satisfies each of the categories listed by Lord Wilberforce.

[109] In light of the above, the most appropriate classification of Bitcoin is as a movable intangible asset.

IS BITCOIN PROPERTY AS DEFINED BY SECTION 2 OF THE INSOLVENCY ACT?

[110] To answer this question it is of assistance to work somewhat backwards

and first look at what the Insolvency Act provides in respect of voidable dispositions.

[111] The predominant purpose of s 341(2) of the Insolvency Act is to decree that all dispositions made by a company being wound-up are void. This provision must of course be read with s 348, which provides that the winding-up of a company by a court shall be deemed to have commenced at the time of the presentation of the application for winding-up to the court.

[112] De Villiers CJ[19] said that the effect of a winding-up order, 'is to establish a *concursus creditorum*, and nothing can thereafter be allowed to be done by any of the creditors to alter the rights of the other creditors'. In the same case, Innes JA succinctly stated the legal position as follows (at 166):

> *'The sequestration order crystallises the insolvent's position; the hand of the law is laid upon the estate, and at once the rights of the general body of creditors have to be taken into consideration. No transaction can thereafter be entered into with regard to estate matters by a single creditor to the prejudice of the general body. The claim of each creditor must be dealt with as it existed*

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[19] Walker v Syfret NO 1911 AD 141 at 160

at the issue of the order.'[20]

[113] The intention of the Legislature is clear and the wording and ambit of s 341(2) of the Act is unambiguous and wide-ranging in the light of the extensive and all-encompassing definition of 'disposition', *supra*, and the use of the pre-modifier "all" in the section itself i.e. "all" dispositions are included and all rights, obligations and relationships are frozen or crystallised and immutable, thereby establishing the *concursus*.

[114] In Pride Milling Company (Pty) Ltd v Bekker NO and Another[21] the SCA put it thus:

> *"The provisions of s 341(2) could not be clearer. They, in unequivocal terms, decree that every disposition of its property by a company being wound-up is void. Thus, the default position ordained by this section is that all such dispositions have no force and effect in the eyes of the law i.e. the disposition is regarded as if it had never occurred. The mischief that s 341(2) seeks to obviate is plain enough. It is to prevent a company being wound-up from*

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[20] Pride Milling Company (Pty) Ltd v Bekker NO and Another (393/2020) [2021] ZASCA 127; [2021] 4 All SA 696 (SCA) at para 13

[21] [2021] 4 All SA 696 (SCA); 2022 (2) SA 410 (SCA) at para 30

dissipating its assets and thereby frustrating the claims of its creditors."

[115] "Disposition" has the meaning assigned to it by s 2 of the Insolvency Act and means *'any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the Court' and "dispose" has a corresponding meaning.'* [22]

[116] Section 2 of the Insolvency Act, in turn, defines property as follows:

> *"property" means movable or immovable property wherever situate within the Republic, and includes contingent interests in property other than the contingent interests of a fidei commissary heir or legatee."*

[117] It follows from the above that when the concepts of "disposition" and "property" are considered in conjunction, it is apparent from the plain meaning of the words that the concept of what constitutes property is couched in the broadest of terms. It could be said to be all embracing and all-encompassing in its scope and ambit.

[118] In my judgment, Bitcoin is clearly an asset or property as it is a

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[22] See: Henochsburg on the Companies Act, 5th Ed. Vol. 1 p 679.

cryptocurrency that is used for the buying or selling or the delivery of goods or services. A value can be had attached to it and is attached to it. There is no justification I can think of to construe Bitcoin as not constituting property as generally understood, nor as falling within the definition of 'property' on a proper and purposive interpretation of the Insolvency Act. When regard is had to definitions, conceptual notions, various opinions, including those of SARS, I can see no reason why in the case of insolvency, where a trustee steps into the shoes of the debtor and acquires the right to dispose of the latter's assets in order to satisfy the claims of creditors, this would not include Bitcoin as an asset or 'property' which, clearly, at the very least is movable property that has value or readily can have a value attributed to it.

[119] In W H Lategan v Commissioner for Inland Revenue,[23] the Court held that an amount does not need only to include money in the form of hard cash, "*but the value of every form of property earned by the taxpayer, whether corporeal or incorporeal, which has a money value*".

[120] The very term incorporeal itself implies an intangible asset such as a right. And if one were to look for an example of an incorporeal form of property on a conspectus of the above, Bitcoin undoubtedly would serve as a classic and clear

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[23] (1926) CPD 203.

example as it exists only on the Internet and attracts ownership rights that can and are valued as an amount in a fiat currency. Therefore, intangible assets such as Bitcoin attract rights *in rem* or *ius in rem* that provide the owner with protection from interference with their assets by anyone, be it either a juristic or natural person.

[121] In the case of Commissioner for Inland Revenue v People's Stores (Walvis Bay) (Pty) Ltd[24] the Court, per Hefer JA stated that what was required for an accrual in terms of the definition of 'gross income' was that the person concerned must have become entitled to the amount in question, or to a right capable of being valued in money.[25]

[122] In Commissioner for Inland Revenue v Delfos,[26] Wessels CJ said the following:

"The tax is to be assessed in money on all receipts or accruals having a money value. If it is something which is not money's worth or cannot be turned into

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[24] (244/88) [1990] ZASCA 1; 1990 (2) SA 353 (AD); (22 February 1990) at para 9.

[25] Commissioner for Inland Revenue v People's Stores (Walvis Bay) (Pty) Ltd. (244/88) [1990] ZASCA 1; 1990 (2) SA 353 (AD); (22 February 1990)At para 18.

[26] 1933 AD 242 at 251.

money, it is not to be regarded as income."

[123] In the case of Bitcoin, regardless of the fact that it is an intangible asset which exists only in an online form, it is susceptible to ownership and flowing from ownership, as I have already demonstrated, results in the owner being vested with certain rights. These rights can only arise in respect of property and, in my judgment, as Bitcoin is capable of being valued in monetary terms and in a fiat currency, it must constitute property.

[124] The principles relating to statutory interpretation are well-established and were usefully restated in Natal Joint Municipal Pension Fund v Endumeni Municipality[27] by Wallis JA, who said:

'[T]he present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and

[27] 2012 (4) SA 593 (SCA) at para 18

syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. . . . The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or un-businesslike results or undermines the apparent purpose of the document. . . . The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.' (Citations omitted.)

[125] That the text, context and purpose of the legislation must be considered together when interpreting a statutory provision, has been affirmed in various decisions of the Constitutional Court.[28]

[126] The legislature has intended in to cast the net as widely as is conceivably possible when it comes to the Insolvency Act finding application and in defining what constitutes 'property'. The language is broad and all encompassing and the

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[28] See, for example: Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) para 90 (the judgment of Ngcobo J) quoted with approval in Du Toit v Minister for Safety and Security [2009] ZACC 22; 2010 (1) SACR 1 (CC); 2009 (12) BCLR 1171 (CC) para 38; Bertie Van Zyl (Pty) Ltd v Minister for Safety and Security [2009] ZACC 11; 2010 (2) SA 181 (CC); 2009 (10) BCLR 978 (CC) para 21; KwaZulu-Natal Joint Liaison Committee v MEC for Education, KwaZulu-Natal [2013] ZACC 10; 2013 (4) SA 262 (CC); 2013 (6) BCLR 615 (CC) para 129; Kubyana v Standard Bank of South Africa Ltd [2014] ZACC 1; 2014 (3) SA 56 (CC); 2014 (4) BCLR 400 (CC) paras 77-8.

extensive reach of what is meant and intended by what constitutes 'property' is pellucid and overarching.

[127] In the light of the above principles of statutory interpretation applied to the Insolvency Act and when having regard to the nature and characteristics of Bitcoin, it ought for the purposes of insolvency, to be regarded and treated as intangible assets that constitute property as defined in s 2 of the Insolvency Act. This, to re-iterate, is beyond doubt when regard is had to the definition in s 2 of the Insolvency Act of 'Disposition', which, it bears repeating is defined as follows:

> *" 'disposition' means any* ***transfer*** *or abandonment of* ***rights to property***[29] *and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the court; and 'dispose' has a corresponding meaning,"* (my emphases)

[128] The owners of Bitcoin clearly own it and regard it as their property and *qua* owner they are free to dispose of it as they wish i.e. they have an indisputable

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[29] This should be read with the definition of 'property' is s 2 of the Insolvency Act. It is trite that "the meaning of 'property' in the Insolvency Act is far wider than under the common law. See: Meskin, Insolvency Law, para 5.1 and Van Zyl and Others NNO v Turner and Another NNO 1998 (2) SA 236 (C) at para 21.

right to their property and the right to do as they wish with it. The fact that it is digital property and has no physical existence does not in any way, manner or form impact on their rights as would be the case with any other type of recognised intangible property. Ownership is usually disposed of by transferring the rights to the property to another. It follows that Bitcoin falls squarely under the definition of 'disposition' in s 2 of the Insolvency Act. Bitcoin is indubitably an asset as an asset is deemed to mean *"any assets which can be applied to the payment of debts"*.[30]

[129] I find further support for my view that Bitcoin is an intangible asset in the findings by the High Court of New Zealand, Christchurch Registry in the matter of Ruscoe v Cryptopia Ltd (in liquidation),[31] to which I alluded earlier. In this matter the Court held that cryptocurrencies are a type of intangible property and that various cryptocurrencies are "property" within the relevant definition of the New Zealand Companies Act (of 1993). The Court referred to cryptocurrency as "digital assets". The Court carried out an exhaustive analysis of International case law and authorities and had regard to these in arriving at its conclusion. It is unnecessary to redo the exercise, suffice it to say that International law appears, on the whole, to be entirely consistent with the findings of the New Zealand High Court.

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[30] See: Ex Part Collins 1927 WLD 172.

[31] See, fn 17, *supra.*

[130] In summary, in my judgment, Bitcoin is as a movable intangible asset that falls within the definition of 'property' in the Insolvency Act. It follows that the liquidators are entitled to a directive that they should treat it as such in the winding-up the insolvent estate of MTI.

GENERAL COMMENTARY AND ANALYSIS OF THE INTERVENING PARTIES OBJECTIONS TO THE RELIEF SOUGHT

[131] The nature of the relief sought in these proceedings is of a limited nature. The Applicants seek directions, as they are entitled to, and it is prudent for them to do so given the nature of the disputes and the disagreements between the parties stop there are thousands of investors that are adversely impacted upon by the MTI Ponzi scheme. It is noteworthy that an insignificant number of investors, who primarily seek to advance their own interests, opposed the relief sought by the Applicants.

[132] While I have attempted to deal with the objections *seriatim*, I am of the view that the objections in any event have no weight. This is principally because the opposition by the Intervening Parties is premised on a misconception of the relief sought by the Applications and a failure to appreciate the limited consequences that follow upon a Court issuing directives for the purpose of enabling and assisting

liquidators to wind-up an insolvent estate.

[133] The Court order will not be dispositive of any issues, nor will it constitute final and binding decisions that conclusively determine the respective parties' rights and obligations. In short, the relief granted in terms of s 387(3) of the 1973 Companies Act is neither final, nor binding in its effect and cannot be construed as being declaratory in any manner or form.

[134] Once regard is had to the true nature of the relief sought, most, if not all, the objections raised by the intervening parties are effectively misplaced and without substance.

[135] The commentary by Blackman, Jooste and Everingham on s 387(3) of the 1973 Companies Act is apposite. Their commentary is lengthy, but as it is comprehensive, it is worthwhile to quote it is full to allay the concerns of the Intervening Parties, and to show that the foundational basis underpinning most of their objections to the relief sough by the Applicants is unnecessary and misplaced. In my view, this exposition of the law is dispositive of most, if not all, the objections they raised. This is what the learned authors have to say:

"*An application for directions is an administrative non-adversary proceeding;*

it is an internal or domestic affair as between the liquidator and the court. The power conferred on the court by s 387(3) is not a power to make binding orders in the nature of judgments. And a direction given pursuant to that section has no effect on the substantive rights of persons external to the winding-up...

The function of a liquidator's application for directions is to give him advice as to his proper course of action in the liquidation. The provision is essentially concerned with future action by a liquidator. Typically, the court will give direction to the effect that the liquidator would be justified in acting in a specified way or on a specified basis....

No fetter is placed on the court's discretion. But it is usually only proper for the court to exercise its power to give the liquidator directions on matters of law or principle, and the court does not usually consider it appropriate to intervene and make the liquidator's commercial decision for him....

Generally, the giving of directions is not appropriate where important facts are in dispute. But the mere fact that some creditor or other person appears at the application and opposes it is not per se a reason not to grant directions if they are otherwise appropriate...

The liquidator should, for his own protection, apply to the court in every case of doubt,' and generally, 'apart from very rare cases... the court should not take the view that it can just leave one of its officers floundering, and that if the liquidator asks for advice, then some advice and directions should be given.

It is appropriate for a liquidator to seek directions as to whether to institute or continue to defend proceedings involving questions of law and In case of real doubt, the proper course for a liquidator to adopt is to seek the court's decision as to whether or not action should be brought, otherwise the costs of proceedings may be incurred which a court might subsequently hold were not properly incurred. On the application seeking such direction, a court is not bound to investigate the evidence in order to make a finding that, on material before it, the proposed proceedings will or will not be successful. It has merely to determine whether or not the proceedings should be taken." (Citations and footnotes omitted)

4. The commentary requires no further elucidation as it sets out the position in clear and plain terms. A further watering-down of the Intervening Parties objections arose as a consequence of the delivery of the judgment in Bester N.O and Others v Mirror Trading International (Pty) Ltd and the objections premised on *lis pendens*

or various decisions still being authoritatively determined are rendered moot.

OBJECTIONS BY THE EDJ INVESTORS

[136] EDJ Investors claim that the entire premise underlying the rule *nisi* is a premature assumption that the claims of the Class 1 and 2 investors are limited to enrichment claim and subject to a finding that the MTI Scheme is an unlawful pyramid scheme and, ergo, that the investment agreements are void *ab initio*.

[137] The difficulty I have with the argument put forward by the EDJ Investors is that it ignores the fact that there never was a *bona fide* investment scheme. From the outset, there was an intention to defraud and not to conduct a legitimate and legally compliant investment scheme in Bitcoin for the purpose of obtaining hoped-for financial returns for the investors. The scheme was fraudulent from the outset and is by now common cause, or not seriously disputed that it was an illegal Ponzi scheme.

[138] This much has now been determined with finality by De Wet, AJ in Bester N.O and Others v Mirror Trading International (Pty) Ltd. The Court expressly held that the scheme was illegitimate from its inception and that all agreements concluded between MTI and its investors in respect of the investment in Bitcoin of

any kind whatsoever were unlawful and *void ab initio*.

[139] On this basis alone, in my judgment, the appropriate date to determine the value of a claim would be the date of the so-called investment as there was no investment contract in existence from the outset. The "investor" was entitled to the immediate return of their investment on the basis of the *condictio ob iniustam causam.*[32] The trite saying is, after all, that "fraud unravels everything."

[140] As was pointed out in Kudu Granite Operations (Pty) Ltd v Caterna Ltd,[33] there is a material difference between suing on a contract for damages following upon cancellation due to breach by the other party and in circumstances where there is a breach by neither party as the contract is of no force or effect. In the first scenario, there is a contractual remedy and restitution may provide a proper measure or substitute for the innocent party's damages. However, in the second scenario, there is no contract from which any rights arise, hence the development in Roman times of the remedy of unjustified enrichment, as an equitable remedy, in respect of which contractual provisions are basically irrelevant and equitable considerations arise.

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[32] See, in this regard, Fourie NO and others v Edeling NO and others [2005] 4 All SA 393 (SCA) at para 13.

[33] 2003 (5) SA 193 (SCA). Hereinafter "Kudu Granite Operations").

[141] In Pucjlowski v Johnstone's Executors,[34] Van den Heever J expanded on the legal position and explained it in these terms:

> *'the object of condiction is the recovery of property in which ownership has been transferred pursuant to a juristic act which was ab initio unenforceable or has subsequently become inoperative.'*

[142] Reverting to Kudu Granite Operations, the SCA confirmed the above legal principle,[35] and, in reference to Wilken v Kohler,[36] extended the principle as applying equally if the contract is void as a result of a statutory prohibition.

[143] *In casu,* the FSCA found that MTI operated a fraudulent and unlawful investment scheme, in disregard of various financial sector laws, conducted an illegal, unregistered financial services business in contravention of, at minimum, s 7 of the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act"). The FSCA concluded that the investments made by investors into MTI and the scheme conducted by it were misappropriated. These findings by the FSCA

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[34] 1946 WLD 1 at 6.

[35] At paragraph 15.

[36] 1913 AD 135 at 149-50.

were endorsed, *inter alia*, by the Court in Bester N.O and Others v Mirror Trading International (Pty) Ltd (in liquidation) t/a MTI and Others and by the Fabricius Commission.

[144] Reverting to Kudu Granite Operations, a further noteworthy and relevant principle emerges from the judgment and that is this: in the event of a failure of an agreement, the party is not entitled to the return of the physical property in circumstances where the asset has been given a specific monetary value. Nor would either party be entitled to insist on repayment of the difference in value but, by analogy, only the return of the agreed purchase price. *In casu,* as a consequence of the unlawful nature of the purported investment agreements that were found to be void *ab initio* by De Wet AJ i.e. the contracts failed at inception due to their illegality. It follows that any purported subsequent or ongoing "agreements" involving Bitcoin were simply void or invalid as there was no antecedent agreement to render valid the re-investment of Bitcoin or money, and a void agreement cannot be revived. The investment agreements were stillborn and it is simply not possible to breath life into a corpse. At inception and from the point when the investment agreements were void, the money purportedly was 'invested' in SA Rands. On the facts, it also appears that the scheme was an ongoing fraud and there was intention by MTI to "invest" or carry out forex trades to obtain financial benefits or returns for its 'investors'. This was all a charade and the investment 'scheme' was simply

a fraudulent and illegal Ponzi scheme. In any event, the Court has pronounced that the purported agreements did not exist, had no legal effect, and were *void ab initio*.

[145] Courts as a general rule will not and do not enforce illegal agreements and the innocent party is entitled to restitution. This is usually done by way of a *condictio,* usually the *condictio ob turpem vel iniustam causam*.[37] This finding meant that all that the investors forthwith were entitled to the return of the money they invested in an illegal scheme. This, as a matter of logic and pragmatism would mean determining their claims in SA Rand value on the date of each investment.

[146] The Supreme Court of Appeal in Eravin Construction CC v Bekker NO and Others[38] pointed out that section 341(2) of the old Act and section 154 2) of the new Companies Acts are different, and are not concerned with when debts are due and can be claimed, but with when they are owed. The Court held that with reference to section 341(2) of the 1973 Act, it expressly states that the disposition in the terms contemplated by it "shall be void". The Court then pointed out that the recipient then has no right to retain it and, consequently is indebted to the body which made the prohibited disposition. This debt the Court held is owed as soon as

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[37] See: McCarthy Retail Ltd v Shortdistance Carriers CC 2001 (3) SA 482 (SCA) para 9; Du Plessis Unjustified Enrichment 4-6

[38] 2016 (6) SA 589 (SCA).

the disposition was received by the recipient.[39]

[147] It should be borne in mind and re-iterated that, as there were no investment agreements that were valid in the eyes of the law, MTI did not have a right to dispose or "invest" the money or any Bitcoin that was - or purportedly was (or a portion thereof) 're-invested or 'repaid'. The "asset" in whatever its form remained the property of the investor. MTI had no mandate or authority to do anything with any assets as the 'agreements' were void and the 'scheme' itself was fraudulent and conducted for a purpose entirely unrelated to *bona fide* investment.

[148] As regards whether the Rand value is appropriate in determining the various claims, the liquidation proceedings were brought in terms of the South African statute, all the various claims rose within South Africa, all the investments made by the investors in South Africa and the winding up of MTI is proceeding in terms of South African law. I can see no reason why a claim should not be reduced to a Rand value.

[149] However, even if I am wrong in this respect, and that the legal authorities cited do not determine that, on a proper application of the principles pronounced therein, is incorrect, I nonetheless agree with Mr Terblanche's submission that the

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[39] At paragraph 21.

correct date to determine the value of the investment would be as at the date of investment.

[150] There are sound policy considerations that support a conclusion that the date of investment should be the date of inception. Notions of fairness and justice, seen in the context of the law of insolvency, provide every indication that this is the fairest approach and gives effect to the whole concept of a *concursus* where there is an accounting, a collection and a just and equitable distribution of a single massed estate to the creditors in the form of a dividend.

[151] The further claim in argument is that the claims of the Class 1 and 2 investors will be limited to an amount equal to their investment in the MTI scheme, calculated on the date of investment of a claim premised under the law of enrichment. This, the argument continues, constitutes a limitation of the fundamental right which a person has in terms of section 34 of the Constitution of the Republic of South Africa, 1996, which provides that,

> *"everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum". The argument continues that the rule nisi cannot be granted as it will limit the*

cause of action which an investor can institute.

[152] In my view, these arguments are premised on a *non sequitur*. It is open to any party to litigate a dispute of their choice, be it on enrichment or on codiction. This, once again, is premised on a misinterpretation and a misunderstanding of the relief sought by the Applicants. Any of the Intervening parties are at liberty to take whatever further legal steps they deem appropriate without limitation. I refer to the comment I have made *sub verbo* 'GENERAL COMMENTARY AND ANALYSIS OF THE INTERVENING PARTIES OBJECTIONS TO THE RELIEF SOUGHT', *supra*.

[153] The proposed draft order, in my view, is in any event phrased in sufficiently circumspect terms, and is not open to doubt that all the investors' rights remain extant and unaffected by the terms of the order, which order constitutes only directives to assist in the winding-up process, and the directives are not final findings in respect of the rights of any party.

[154] The fundamental purpose of the relief sought is to obtain directions to assist the liquidators in the winding up process. These directions clearly can never be binding and limit any party's right to assert their rights in a court of law and bring claims against the insolvent estate in any manner or form.

[155] As regards the objection that they are deprived of the transfer, presumably meaning the re-transfer of bitcoin, and that they are entitled to the return of their investment i.e. Bitcoin based on the *condictio ob turpem vel iniustam*.

[156] I am of the view that it is unnecessary for me to make any findings in this regard for the simple reason that, regardless as to who is correct on this point, the relief sought is not in the form of a declaratory order. It is, accordingly, not dispositive of the rights of the parties and is not declarative of the rights or obligations of any of the parties. The parties are at liberty to litigate any claims they allege to have and set out the basis or bases for their claims. However, *prima facie*, it appears that much of the Bitcoin is unaccounted for in any event, and cannot be returned.

[157] Be that as it may, all the above legal considerations and the concerns of all the Intervening Parties are rendered moot by the terms of the proposed amended order. In my view, the terms of the amended order, which I shall amend further, put paid to the various grounds of opposition to the interim relief sought as the arguments put forward in support of the opposition to the granting of the order in the terms sought by the Applicants are rendered nugatory by the inclusion of paragraph 7 of the amended court order handed up by the Applicants at the hearing, which reads thus:

"7. None of the above orders constitute a finding of any fact or law against any investor or any other person in any action instituted by the liquidators and no finding is made in respect of ownership of any bitcoin."

[158] The order I propose to make include the additional words in bold which are underlined:

"7. None of the above orders constitute a finding of any fact or law against any investor or any other person in any action instituted, ***or to be instituted*** *by,* ***or against*** *the liquidators, and no finding is made in respect of the ownership of any Bitcoin."*

CONCLUSION

[159] I am satisfied that the Applicants were justified in seeking directives from the Court and that it was prudent to have done so, given the scale and complexities of the winding-up of what is a massive and extensive fraudulent scheme.

[160] I am further unpersuaded that the objections raised by the Intervening

Parties suffice to refuse granting the relief sought by the Applicants. To dismiss the application will simply leave the liquidators in limbo and result in protracted and lengthy litigation. They will, in the interim, be hamstrung in performing their primary functions, which are to recover and reduce into possession all the assets and property of the company, to apply these proceeds in satisfaction of the costs of the winding-up and to settle the claims of the creditors.

COSTS

[161] The liquidators accepted that the intervening parties had the right to make submissions to the Court in respect of the directives which they sought. The legal representatives of each of the intervening parties accordingly submitted heads (save for the Second Intervening Party) of argument and addressed the court at the hearing.

[162] The Applicants do not seek a costs order against the First and Third Intervening Parties, but as against the other Intervening Parties the submission was that costs should follow the result.

[163] I accept that the submissions made on the part of the Third Intervening Party were relevant to the debate and the issues at hand. The Applicants have

indicated that they have no strong objections to the costs of the Third Intervening Party being costs in the liquidation and I believe that this concession was fairly made. In my view, and in exercising my discretion, I believe that it is appropriate that the numerous investors ought to have had opportunity to state their respective points of view, including the First Intervening Party, in light of the novel issues that arose for consideration.

[164] In all the circumstances, it seems to me that as it is only fair that, as each of the Intervening Party was afforded an opportunity to express their opinions and views on issues that will directly impact on them, and as the Applicants had no other option (having exhausted all others) but to approach a Court for directions, it is appropriate that the costs of all the parties should be costs in the liquidation.

[165] I would add that the insolvent estate is substantial and claims similarly substantial and the costs in respect of this matter are unlikely to make much impact on the dividend each investor ultimately receives.

[166] In the circumstances, and in the exercise of my discretion, I am of the view that it is fair that the costs of all the Intervening Parties be costs in the liquidation.

ORDER

[167] Insofar as the relief was sought in paragraph 5 and the subparagraphs thereunder and paragraph 6 of the draft order had been overtaken by events in that it has been found that investment agreements concluded by between the Company and the investors are *void ab initio*, I nonetheless have retained the provisions pertaining to the alternative finding i.e. that they are not void *ab initio*. I did this *ex abudanti cautela* as I cannot preclude the possibility of another Court coming to a different conclusion at some future point. It is thus appropriate and prudent to grant relief inclusive of the alternative scenario, notwithstanding that it is improbable that another Court will arrive at a different conclusion as regards the agreements being declared void *ab initio* as was found in Bester N.O and Others v Mirror Trading International (Pty) Ltd.

[168] In the circumstances, the Applicants have made out a proper case for the relief they sought in its amended form and as subsequently further amended by the Court and I accordingly grant an order as per the order attached hereto marked "X".

A D MAHER

Acting Judge of the High Court

"FA 6"

"X"

9-11-2023

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO.: **13721/2022**

Before: **The Honourable Mr Acting Justice Maher**

Cape Town: **THURSDAY, 9 NOVEMBER 2023**

In the matter between:

H BESTER N.O.	First Applicant
A W VAN ROOYEN N.O.	Second Applicant
C J ROOS N.O.	Third Applicant
J F BARNARD N.O.	Fourth Applicant
D BASSON N.O.	Fifth Applicant
C B S COOPER N.O.	Sixth Applicant

(cited in their capacities as the joint liquidators of

Mirror Trading (Pty) Ltd (in liquidation)

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2023 -11- 20
WCD-009
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

and

THE MASTER OF THE HIGH COURT, CAPE TOWN Respondent

C H MARKS	First Intervening Party
P R BOTHA	Second Intervening Party
THE EDJ INVESTORS	Third Intervening Party
J A FISHER N.O.	Fourth Intervening Party
R N KHARIVHE N.O.	Fifth Intervening Party

(cited in their capacities as the joint trustees of the

Insolvent estate of Cornelius Johannes Steynberg)

ORDER

AFTER HAVING READ THE PAPERS FILED OF RECORD and having heard counsel for the Applicants and the Intervening Parties, an order is granted, pursuant to the provisions of sub-section 387(3) of the1973 Companies Act, in the following terms:

1. The liquidators should treat Bitcoin ("BTC") in the in the administration of the estate of Mirror Trading International (Pty) Ltd ("the Company") as intangible assets that constitute "property" as defined in section 2 of the Insolvency Act 24 of 1936 ("the Insolvency Act").

2. The liquidators, in dealing with claims by and against those who deposited BTC with the Company "(Investors"), are required to take specific cognisance of the following classes of Investors in the so-called Investment Scheme operated by the Company ("the Scheme"):

2.1 The first class of investors are those individuals who invested in the Scheme, but who did not receive anything- i.e. zero - in return ("Class 1 Investors");

2.2 The second class of investors are those individuals who invested in the Scheme and who, although having received a return on their investment, received less than what they invested in the Scheme ("Return" and "Class 2 Investors"). These investors, although having received a Return, did not profit from the Scheme; and

2.3 The third class of investors are those individuals who invested in the Scheme and who received returns that exceed the amount of capital invested in the Scheme, thereby profiting from being participants in the scheme ("Profit" and "Class 3 Investors").

3. Those individuals who deposited BTC with the Company and who intend to submit claims in the winding-up of the Company and prove same as contemplated by section 44 of the Insolvency Act, are required to submit their claims with the Company in Rand value.

4. In the event that the investment agreements concluded by and between the Company and Investors are void *ab initio* as a consequence of the alleged illegality of the Company's business ("the first scenario"), then:

4.1 In relation to Class 1 Investors:

4.1.1 Class 1 Investors should be permitted to submit a claim against the estate in an amount equal to their investment in the Scheme;

4.1.2 the value of a Class 1 Investors' investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;

4.1.3 insofar as their claims are properly proved in compliance with section 44 of the Insolvency Act, their claims should be accepted by the Liquidators.

4.2 In relation to Class 2 Investors:

4.2.1 they will have to account towards the estate for any Return(s) on their so-called investment(s) in the Scheme;

4.2.2 the Liquidators must ensure that the Returns are taken into account and subtracted from the investments made by the Class 2 Investors into the Scheme, so that those Returns may ultimately be applied in reduction of their claims against MTI;

4.2.3 Class 2 Investors should be permitted to submit a claim against the estate in an amount equal to their impoverishment or the Company's enrichment, which ever is the lesser, which is in turn to be quantified by subtracting the properly quantified Return(s) from the properly quantified investment(s) of the relevant Investor(s), the result of which will represent

either one or both of the Investors' impoverishment or the Company's enrichment;

4.2.4 the value of a Class 2 Investors' investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made the relevant investment in the Scheme;

4.2.5 the value of a Class 2 Investors' Returns should be calculated in Rand value, as at the date upon which the relevant Return or portion thereof was paid by the Company to the relevant investor;

4.2.6 to the extent that a Class 2 Investor submits a claim in the estate that complies with section 44 of the Insolvency Act, that represents the Rand value of the lesser of that Investor's impoverishment or the Company's enrichment, in a manner that corresponds with the Liquidators' independent assessment, such claims should be accepted by the Liquidators;

4.2.7 the Liquidators will remain vested with claims against the Class 2 Investors for repayment of the Returns, in terms of section 29 and 30 of the Insolvency Act, despite the fact that a Class 2 Investor's claim may have been reduced to account for the same Return when that Investor proved a claim in the estate, provided that the jurisdictional requirements of those sections can be satisfied;

4.2.8 the Liquidators may then pursue the Class 2 Investors in respect of the Returns, in terms of either section 29 or 30 of the Insolvency Act;

4.2.9 when a Return paid to a Class 2 Creditor is set aside by a Court in terms of section 29 or 30 of the Insolvency Act, that Return [in whatever form contemplated by section 32(3) of the Insolvency Act] will be repaid/returned to the estate, to form part of the assets available for ultimate distribution to the creditors in the form of a dividend;

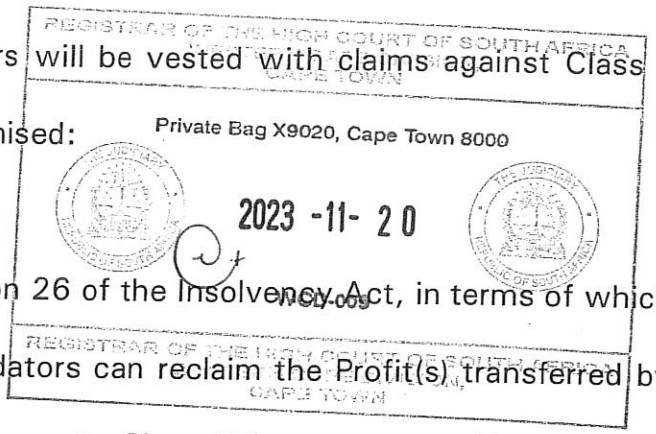
4.2.10 in such event, the Class 2 Investor concerned should be

afforded an opportunity of proving an additional claim against the estate, in relation to the Return in question.

4.3 In relation to Class 3 Investors:

4.3.1 Class 3 Investors will initially not have a claim against the Company;

4.3.2 The Liquidators will be vested with claims against Class 3 Investors premised:



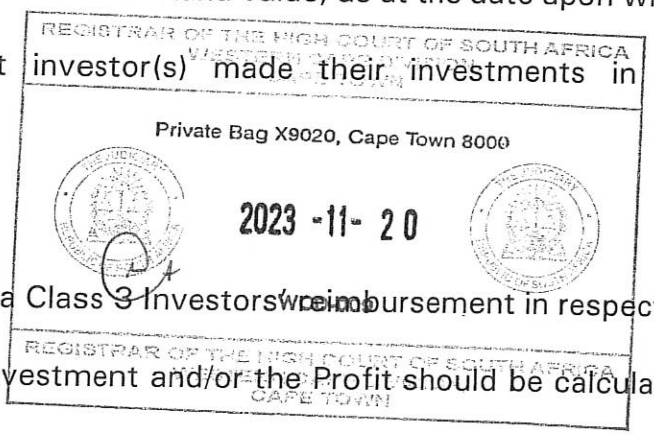
4.3.2.1 On section 26 of the Insolvency Act, in terms of which the Liquidators can reclaim the Profit(s) transferred by the Company to Class 3 Investors, provided that the jurisdictional requirements of those sections can be satisfied;

4.3.2.2 On sections 29 or 30 of the Insolvency Act, on the very same basis that they have claims against the Class 2 Investors under these sections, provided that the

jurisdictional requirements of those sections can be satisfied;

4.3.2.3 On section 31 of the Insolvency Act in the case of those individuals who colluded to dispose of the property belonging to MTI in a manner which had the effect of prejudicing its creditors or of preferring one of its creditors above another, when and where the circumstances so permit.

4.3.3 The value of a Class 3 Investors' investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant investor(s) made their investments in the Scheme;



4.3.4 The value of a Class 3 Investors' reimbursement in respect of their initial investment and/or the Profit should be calculated in Rand value, as at the date upon which the relevant creditor(s) received same from the Company;

4.3.5 in dealing with claims by and against Class 3 Investors in the First Scenario:

4.3.5.1 claims submitted by Class 3 Investors, prior to the finalisation of the Liquidators' claims that are to be instituted in terms of sections 26 and 29 or 30 and/or 31 of the Insolvency Act, should be rejected;

4.3.5.2 the Liquidators may pursue the Class 3 Investors in respect of all transfers made to these Investors by the Company, including in respect of the Profit(s), in terms of section 26 and 29 or 30 and/or 31 of the Insolvency Act, when and where the circumstances are so permit;

4.3.5.3 the Liquidators, once successful in procuring return of the subject disposition(s), should thereafter allow the affected Class 3 Investors a further opportunity to prove a claim in the estate, arising from the Company being re-vested with their initial investment into the Scheme, but not in respect of profit;

4.3.5.4 the Liquidators should not permit any claim in terms of which Profit is claimed from the estate - such a claim will in the circumstances be statutorily excluded in terms of section 26(2) of the Insolvency Act.

5. In the event that the investment agreements concluded by and between the Company and Investors are not *void ab initio* ("the second scenario"), then:

5.1 Investors will in the Second Scenario acquire the status of a creditor of the Company on a contractual basis and the Liquidators are vested with claims against Investors in the Second Scenario based on section 29 or section 30 of the Insolvency Act, when and where the circumstances so permit;

5.2 claims submitted by Investors should be admitted insofar as they comply with section 44 of the Insolvency Act, provided that such claims are properly formulated and proven;

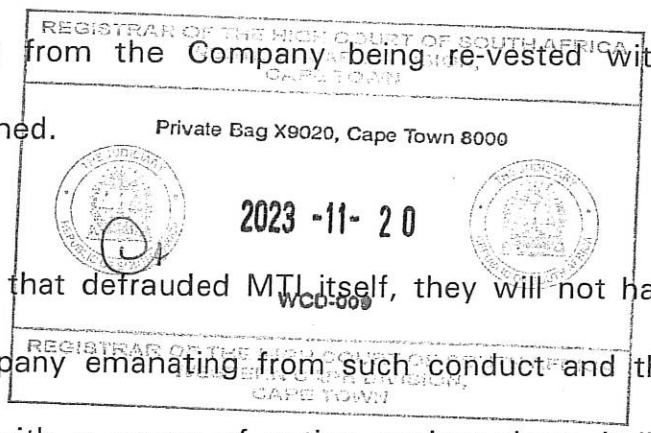
5.3 claims submitted by Investors should be calculated in Rand value as at the date of liquidation, and such claims are to represent the available

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

balance of the relevant investor's investment(s) in question after taking into account "Bitcoin in and Bitcoin out";

5.4 liquidators should then pursue the Class 2 Investors in respect of the Returns, and the Class 3 Investors in respect of their initial investments and the Profits, transferred to them by the Company, in terms of either section 29 or 30 of the Insolvency Act, when and where the circumstances so permit;

5.5 liquidators, once successful in procuring the return of the subject disposition(s), should permit such Investors to prove a further claim in the estate, arising from the Company being re-vested with such dispositions concerned.



6. In relation to individuals that defrauded MTI itself, they will not have any claims against the Company emanating from such conduct and that the Liquidators are vested with a cause of action against these individuals premised, *inter alia*, on section 26 and/or section 31 of the Insolvency Act, to reclaim dispositions to these individuals by the Company, when and where the circumstances so permit.

7. None of the above orders constitute a finding of any fact or law against any investor or any other person in any action instituted, or to be instituted by, or against the liquidators, and no findings are made in respect of ownership of any Bitcoin.

8. The costs of the application, including the costs of the First, Second, Third, Fourth and Fifth Intervening Parties are costs in the liquidation.

BY ORDER OF THE COURT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

Private Bag X9020, Cape Town 8000

2023 -11- 20

COURT REGISTRAR WCD-009

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

Strydom & Rabie Inc
Tel: 012 786 0954
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Tel: 021 914 3322
email: Krugervd@mbalaw.co.za
BOX 97

"FA7"

PARTICULARS OF CLAIM

THE PARTIES:

1. First Plaintiff is **HERMAN BESTER N.O.**, an adult male insolvency practitioner, practicing as such at Tygerberg Trustees, situated at 1st Floor, Cascade Terraces, Waterfront Road, Tyger Waterfront, Tyger Valley, Western Cape, cited herein in his capacity as the duly appointed joint liquidator of Mirror Trading International (Pty) Ltd (in liquidation) ("**MTI**").

2. Second Plaintiff is **ADRIAAN WILLEM VAN ROOYEN N.O.**, an adult male insolvency practitioner, practicing as such at Investrust, situated at 64 Stella Street, Brooklyn, Pretoria, Gauteng, cited herein in his capacity as the duly appointed joint liquidator of MTI

3. Third Plaintiff is **CHRISTOPHER JAMES ROOS N.O.**, an adult male insolvency practitioner, practicing as such at Sebenza Trust, Unit 2A, 43 Estcourt Avenue, Wierdapark, Centurion, Gauteng, cited herein in his capacity as the duly appointed joint liquidator of MTI.

4. Fourth Plaintiff is **JACOLIEN FRIEDA BARNARD, N.O.**, an adult female insolvency practitioner, practicing as such at Barn Trustees, 310 Soutpansberg Road, Rietondale, Pretoria, Gauteng, cited herein in her capacity as the duly appointed joint liquidator of MTI.

5. Fifth Plaintiff is **DEIDRE BASSON N.O.**, an adult female insolvency practitioner, practicing as such at Tshwane Trust Company, 1207 Cobham Road, Queenswood, Pretoria, Gauteng, cited herein in her capacity as the duly appointed joint liquidator of MTI.

6. Sixth Plaintiff is **CHAVONNES BADENHORST ST CLAIR COOPER N.O.**, an adult male insolvency practitioner, practicing as such at Cooper Trust, situated at 1st Floor, West Wing Chambers, Northridge Mall, Kenneth Kaunda Road, Bloemfontein, Free State, cited herein in his capacity as the duly appointed joint liquidator of MTI.

7. Seventh Plaintiff is **KEVIN TITUS N.O.**, an adult male insolvency practitioner, practicing as such at Titus & Associates Attorneys, situated at 1st Floor, Hycastle House, 58 Loop Street, Cape Town, Western Cape, cited herein in his capacity as the duly appointed joint liquidator of MTI.

8. Eighth Plaintiff is **DANIEL SANDILE NDLOVU N.O.**, an adult male insolvency practitioner, practicing as such at Siyakhula Administrators, situated at 28 Wale Street, Cape Town, Western Cape, cited herein in his capacity as the duly appointed joint liquidator of MTI.

9. Defendant is **ANMARIE BARNARD**, an adult female with identity number 7111050044088, residing at **17 Arsenal Street, Brackenfell South, Brackenfell, Western Cape**.

JURISDICTION

10. The above Honourable Court is afforded jurisdiction to adjudicate this action by virtue of the fact that the Defendant permanently resides within the area of the Court's jurisdiction.

THE PLAINTIFFS' *LOCUS STANDI* AND AUTHORITY

11. The Plaintiffs act herein in their official capacities as the duly appointed joint liquidators of MTI.

12. Copies of the respective Certificates of Appointment of the Plaintiffs as joint liquidators, are annexed hereto marked as annexure "**MTI-1.1**" and "**MTI-1.2**".

13. On 4 February 2022, the Plaintiffs were duly authorised to institute legal proceedings on behalf of MTI, in terms of a Resolution of creditors passed at the second meeting of creditors. A copy of the Resolution is annexed hereto marked as annexure "**MTI-2**".

14. Plaintiffs therefore have the necessary authority and locus standi to institute these proceedings.

MTI's LIQUIDATION:

15. Prior to MTI's liquidation, MTI:

15.1 Commenced business on 30 April 2019;

15.2 Held itself out to the public as being an internet based crypto-currency club where deposited crypto-currency bitcoin of its members or investors would grow through forex trading by registered and regulated brokers;

15.3 Accepted deposits of bitcoin from members of the general public;

15.4 Carried on business unlawfully and in contravention of section 7(1) of the Financial Advisory and Intermediary Services Act, 37 of 2002 ("**the FAIS Act**"); and/or

15.5 Acted as a so-called Over-The-Counter derivative provider, as defined by Regulation 2 of the Financial Markets Act, 19 of 2012 ("**the FMA**"), read with section 68 of the FMA, without being authorised to do so and in contravention of these provisions; and/or

15.6 Provided, as part of its business, a financial product, financial service or market infrastructure in contravention of the provisions of section 111 of the Financial Sector Regulation Act, 9 of 2017 ("**the FSR Act**"); and/or

15.7 Conducted a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 45 of 2002, ("**CISCA**") without being registered as a manager or being an authorised agent or being exempted from the provisions of CISCA, as provided for in section 5 therein; and/or

15.8 Directly or indirectly promoted, knowingly joined and/or entered into and participated in fraudulent financial transactions, as described in section 42(4) of the Consumer Protection Act, 68 of 2008, ("**CPA**"); and/or

15.9 Directly promoted and conducted a pyramid scheme as described in section 43(2)(b), read with section 43(4) of the CPA; and/or

15.10 Had an underlying business model which was designed and implemented to perpetrate theft and fraud on members of the public by enticing them to invest in an unlawful Ponzi-type investment scheme, with the fraudulent intent to convince members of the public to transfer their right, title and interest, alternatively their effective control over their right, title and interest in their bitcoin, to MTI and to ultimately enable the directing minds of MTI, including its directors and the management and marketing team, to misappropriate these assets for their personal gain;

15.11 Concluded purported investment agreements by requiring prospective investors to accept certain online written terms and conditions ("**the MTI investor agreement**") before being allowed to become an investor in MTI;

15.12 Represented in the MTI investor agreement, that an investor's deposited bitcoin with MTI would grow through forex trading with various registered and regulated brokers and that the marketing of MTI's business would be based on a multi-level marketing strategy;

15.13 For all of the above reasons, carried on an unlawful and fraudulent Ponzi-type investment scheme ("**the unlawful scheme**") as a result of which all MTI investor agreements, including any agreement concluded with the Defendant, were *void ab initio*.

16. On 23 December 2020 Anton Fred Melchior Lee presented his application to the High Court of South Africa, (Western Cape Division, Cape Town) for an order to liquidate MTI.

17. MTI was provisionally wound-up by order of the High Court of South Africa, Western Cape Division, on 29 December 2020 and the provisional winding-up order was confirmed on 30 June 2021.

18. Copies of the provisional and final liquidation orders are attached hereto marked annexures "**MTI-3**" and "**MTI-4**" respectively.

19. In terms of section 348 of the Companies Act, 61 of 1973 ("**the Companies Act, 1973**"), the deemed date of commencement of liquidation of MTI is 23 December 2020 ("**the date of liquidation**").

20. At all relevant times referred to hereinafter and to date hereof:

20.1 the liabilities of MTI exceeded its assets; and

20.2 MTI was unable to pay its debts and has at all times since been unable to pay its debts as contemplated in section 339, as read with section 340 of the Companies Act, 1973.

DISPOSITIONS MADE BY MTI TO THE DEFENDANT:

21. The Defendant, from time to time, opened, controlled, transacted in and/or held account(s) in MTI for his/her own benefit, which account(s) has (have) the following unique "User ID" number(s) and account name(s):

21.1 User ID 3991793 - Anmarie;

21.2 User ID 6345269 - Bareon;

21.3 User ID 9489706 - StianBarnard;

(hereinafter "**the Defendant's accounts**")

22. The Defendant, from time to time, transferred bitcoin to MTI and received transfers of bitcoin from MTI.

23. A schedule, reflecting all the Defendant's aforesaid transactions with MTI, in chronological order, is attached as annexure "**MTI-5**". As appears from the columns in this schedule:

23.1 In the first column, each transaction is numbered consecutively to simplify any reference to a particular transaction;

23.2 In the second column, the particular account of the Defendant in which that particular transaction occurred is identified with reference to the unique account User ID number of the relevant account;

23.3 In the third column, the date and time of the transaction is reflected;

23.4 In the fourth column, the transaction type - being either a transfer of bitcoin by the Defendant to MTI (reflected as "In") or a transfer of bitcoin from MTI to the Defendant (reflected as "Out") - is identified;

23.5 In the fifth column, the amount of bitcoin transacted is reflected;

23.6 In the sixth column, the Rand value of the particular transaction is reflected, which value is calculated by multiplying the amount of bitcoin transacted on that date with the conversion rate of bitcoin to South African Rand which prevailed on the date of that transaction;

23.7 In the seventh column:

23.7.1 The Defendant's balance of bitcoin transferred to MTI and transferred by MTI to the defendant is reflected as a continuous, running balance;

23.7.2 Whenever the balance reflects a positive amount of bitcoin, such a balance represents the Defendant's overall amount of bitcoin actually transferred to and remaining in MTI as at the date of any particular transaction;

23.7.3 Whenever the Defendant receives a transfer of bitcoin in any particular transaction which exceeds the positive amount of bitcoin reflected in this column, the amount of bitcoin by which such transfer exceeds the positive balance of bitcoin the Defendant had transferred to MTI at that time is then reflected in this column as a negative amount of bitcoin; and

23.7.4 Any transfer of bitcoin by MTI to the Defendant in an amount of bitcoin which exceeds the positive balance of bitcoin at the time of that transaction gives rise to a claim against that Defendant in terms of section 26 of the Insolvency Act, 24 of 1936 ("**the Insolvency Act**"), as pleaded later below, and consequent to such claim, the Defendant's running balance of bitcoin in MTI is then returned to zero bitcoin before any subsequent transaction occurs.

23.8 In the eighth column:

23.8.1 The amount of bitcoin transferred by MTI to the Defendant in excess of the positive running balance of the Defendant at the time of that transaction (being the amount reflected in column seven) constitutes a transfer of "**additional bitcoin**" in the amount reflected in this column; and

23.8.2 The Rand value of the additional bitcoin transferred by MTI to the Defendant, which value is calculated by multiplying the amount of additional bitcoin with the conversion rate of bitcoin to South

African Rand which prevailed on the date of that transaction, is reflected.

23.9 In the ninth column:

23.9.1 The amount of every transfer of bitcoin by MTI to the Defendant from the Defendant's accounts which occurred within 6 (six) months from the date of liquidation of MTI, less so much of that transfer as constitutes a transfer of additional bitcoin in that particular transaction (and as already reflected in the eighth column), is reflected;

23.9.2 The Rand value of the aforesaid amount of bitcoin transferred by MTI to the Defendant is reflected, which value is calculated by multiplying the amount of bitcoin reflected in this column with the conversion rate of bitcoin to South African Rand which prevailed on the date of that transaction; and

23.9.3 The bold horizontal line in the schedule distinguishes between the transactions of bitcoin between MTI and the Defendant which occurred more than 6 (six) months before the date of liquidation of MTI, being all the transactions above the line, and within 6 (six) months of the date of liquidation of MTI, being all the transactions below the line.

23.10 In the tenth column:

23.10.1 The amount of every transfer of bitcoin by MTI to the Defendant which occurred within 6 (six) months from the date of liquidation of MTI is reflected; and

23.10.2 The Rand value of the aforesaid amount of bitcoin transferred by MTI to the Defendant is reflected, which value is calculated by multiplying the amount of bitcoin transacted with the conversion rate of bitcoin to South African Rand which prevailed on the date of that transaction.

23.11 In the eleventh column:

23.11.1 The amount of every transfer of bitcoin from MTI to the Defendant is reflected; and

23.11.2 The Rand value of the aforesaid amount of bitcoin transferred by MTI to the Defendant is reflected, which value is calculated by multiplying the amount of bitcoin transacted with the conversion rate of bitcoin to South African Rand which prevailed on the date of that transaction.

24. The Plaintiffs request that every transaction of bitcoin between MTI and the Defendant, as set out in annexure "MTI-5", be incorporated as having been specifically pleaded herein.

25. Every transfer of bitcoin by MTI to the Defendant constitutes a "disposition" of the property of MTI, as contemplated in section 2 of the Insolvency Act.

26. **Claim 1 - Section 26 of the Insolvency Act:**

26.1 A schedule reflecting the amount and the value of every transfer of additional bitcoin by MTI to the Defendant is attached as annexure "**MTI-6**". The Rand value of the additional bitcoin is calculated by multiplying the amount of the additional bitcoin with the conversion rate of bitcoin to South African Rand which prevailed on the date of every transaction reflected in this schedule.

26.2 The Plaintiffs request that every transfer of additional bitcoin by MTI to the Defendant, as set out in the aforesaid schedule, be incorporated herein as if specifically pleaded.

26.3 Each transfer by MTI of additional bitcoin to the Defendant was not made for value, as contemplated in section 26 of the Insolvency Act, in that:

26.3.1 MTI was not liable to dispose of any bitcoin to the Defendant in excess of the bitcoin the Defendant had transferred to MTI;

26.3.2 In disposing of bitcoin in excess of the amount of bitcoin the Defendant transferred to MTI, MTI made dispositions of the additional bitcoin without receiving value therefor;

26.3.3 Each of the dispositions of the additional bitcoin made by MTI to the Defendant were made less than two years before the liquidation of MTI; and

26.3.4 At the time when MTI made such dispositions to the Defendant, its liabilities already exceeded its assets, and the disposition of such additional bitcoin to the Defendant increased the extent by which MTI's liabilities already exceeded its assets.

26.4 Each of the dispositions made by MTI to the Defendant of the additional bitcoin, as reflected in annexure **"MTI-6"**, is therefore liable to be set aside in terms of section 26(1), read with section 32(3) of the Insolvency Act.

26.5 Consequent upon those dispositions being set aside, the Plaintiffs are entitled to an order against the Defendant that the Defendant be directed to return the additional bitcoin the defendant received to the Plaintiffs or in default thereof, to pay to the Plaintiffs the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, whichever value is higher.

27. **Claim 2 - Section 29 of the Insolvency Act:**

27.1 Each disposition of bitcoin to the Defendant by MTI, to the extent which such dispositions were made within 6 (six) months before the date of liquidation of MTI, constitutes a preference of the Defendant by MTI which is voidable, as contemplated in section 29 of the Insolvency Act, in that:

27.1.1 Each of the dispositions made by MTI of bitcoin to the Defendant had the effect of preferring the Defendant over the remaining creditors of MTI; and

27.1.2 Immediately after each disposition of bitcoin was made by MTI to the Defendant, the liabilities of MTI exceeded its assets.

27.2 A schedule reflecting the amount and the value of every disposition of bitcoin by MTI to the Defendant which occurred within 6 months before the date of liquidation of MTI, excluding any amount of bitcoin which, as part of any such disposition, constitutes a disposition of additional bitcoin claimed by the Plaintiffs in their first claim, is attached as annexure "**MTI-7**". The value of the bitcoin reflected in this schedule is calculated by multiplying the amount of bitcoin with the conversion rate of bitcoin to South African Rand which prevailed on the date of every transaction reflected in this schedule.

27.3 The Plaintiffs request that every transaction whereby bitcoin was disposed of by MTI to the Defendant, save to the extent which any such disposition includes a disposition of additional bitcoin which is claimed as part of the Plaintiffs' first claim, made within 6 (six) months from the date of liquidation of MTI, as set out in annexure "MTI-7", be incorporated herein as if specifically pleaded.

27.4 Each of the dispositions made by MTI to the Defendant in annexure "**MTI-7**", made within 6 (six) months before the date of liquidation of MTI, is therefore

liable to be set aside in terms of section 29, read with section 32(3) of the Insolvency Act.

27.5 Consequent upon those dispositions being set aside, the Plaintiffs are entitled to an order that the Defendant be directed to return the bitcoin the Defendant received from MTI within 6 (six) months before the liquidation of MTI, other than additional bitcoin received by the Defendant, to the plaintiffs or in default thereof, to pay to the Plaintiffs the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, whichever value is higher.

28. **First alternative claim to claims 1 and 2 above - Section 29 of the Insolvency Act**

28.1 In the alternative to the Plaintiffs first and second claims, the Plaintiffs plead as set out further below.

28.2 Each disposition of bitcoin to the Defendant, to the extent which such dispositions were made within 6 (six) months before the date of liquidation of MTI, constitutes a preference of the Defendant by MTI which is voidable, as contemplated in section 29 of the Insolvency Act, in that:

28.2.1 Each of the dispositions made by MTI of bitcoin to the Defendant had the effect of preferring the Defendant over the remaining creditors of MTI; and

28.2.2 Immediately after each disposition of bitcoin was made by MTI to the Defendant, the liabilities of MTI exceeded its assets.

28.3 A schedule setting out each disposition of bitcoin made by MTI to the Defendant within 6 (six) months before the date of liquidation of MTI, together with the value of such disposition, calculated by multiplying the amount of bitcoin transferred with the conversion rate of bitcoin to South African Rand which prevailed on the date of every transaction reflected in this schedule, is attached as annexure "**MTI-8**".

28.4 The Plaintiffs request that every transaction whereby MTI disposed of bitcoin to the defendant within 6 months before the date of liquidation of MTI, as set out in annexure "**MTI-8**", be incorporated herein as if specifically pleaded.

28.5 Each of the dispositions made by MTI to the Defendant within 6 (six) months before the date of liquidation of MTI is therefore liable to be set aside in terms of section 29, read with section 32(3) of the Insolvency Act.

28.6 Consequent upon those dispositions being set aside, the Plaintiffs are entitled to an order against the Defendant that the Defendant be directed to return the bitcoin the Defendant received from MTI within 6 (six) months before the liquidation of MTI to the Plaintiffs or in default thereof, to pay to the Plaintiffs the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, whichever value is higher.

29. **Second *alternative* claim to claims 1, 2 and the first alternative claim above - Section 30 of the Insolvency Act:**

29.1 In the further alternative to the Plaintiffs' first and second claims and the Plaintiffs' first alternative claim, the Plaintiffs plead that each and every disposition of bitcoin made by MTI to the Defendant constitutes an undue preference of the Defendant by MTI, as contemplated in section 30 of the Insolvency Act, in that:

29.1.1 At all relevant times when the dispositions were made by MTI to the Defendant, the liabilities of MTI exceeded its assets;

29.1.2 Each of the dispositions made by MTI was made with the intention to prefer the Defendant as a purported creditor over the remaining creditors of MTI, since MTI was aware that:

29.1.2.1 the dispositions were made from MTI's bitcoin which it received from members in the carrying on of the unlawful business of MTI;

29.1.2.2 through effecting the dispositions to the Defendant, MTI became unable to perform its obligations towards its other creditors; and

29.1.2.3 the dispositions made to the Defendant had the effect of preferring the Defendant over the remaining creditors of MTI;

29.1.3 MTI intended, through such dispositions being made to the Defendant, to defraud the creditors of MTI and/or to prefer the Defendant over other creditors of MTI; and

29.1.4 The dispositions made by MTI to the Defendant had the effect of unduly preferring the Defendant over the other creditors of MTI.

29.2 A schedule setting out each disposition of bitcoin made by MTI to the Defendant, together with the value of each such disposition, calculated by multiplying the amount of bitcoin transferred with the conversion rate of bitcoin to South African Rand which prevailed on the date of every transaction reflected in this schedule, is attached as annexure "**MTI-9**".

29.3 The Plaintiffs request that every transaction whereby MTI disposed of bitcoin to the defendant, as set out in annexure "MTI-9", be incorporated herein as if specifically pleaded.

29.4 Each of the dispositions made by MTI to the Defendant is therefore liable to be set aside in terms of section 30, read with section 32(3) of the Insolvency Act.

29.5 Consequent upon those dispositions being set aside, the Plaintiffs are entitled to an order against the Defendant that the Defendant be directed to

return the bitcoin the Defendant received from MTI to the Plaintiffs or in default thereof, to pay to the Plaintiffs the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, whichever value is higher.

WHEREFORE the Plaintiffs claim:

1. **In respect of Claim 1:**

1.1 That each of the dispositions made by MTI to the Defendant of additional bitcoin, as set out in the schedule annexed to the particulars of claim as annexure "**MTI-6**", is hereby set aside in terms of section 26(1) of the Insolvency Act.

1.2 The Defendant is ordered:

1.2.1 To return 0.58707641 bitcoin to the Plaintiffs; or

1.2.2 To pay to the Plaintiffs the sum of **R131 412.94** or the value of 0.58707641 bitcoin, calculated at the prevailing rate of exchange for bitcoin as on the date of this order, whichever is the greater.

2. **In respect of Claim 2:**

2.1. That each of the dispositions of bitcoin made by MTI to the Defendant within 6 (six) months before the date of liquidation of MTI, other than MTI's disposition of additional bitcoin to the Defendant forming the subject of Claim 1, as set out

in the schedule annexed to the particulars of claim as annexure "**MTI-7**", is hereby set aside in terms of section 29 of the Insolvency Act.

2.2. The Defendant is ordered:

2.2.1 To return 0.93848471 bitcoin to the Plaintiffs; or

2.2.2 To pay to the Plaintiffs the sum of **R206 992.62** or the value of 0.93848471 bitcoin, calculated at the prevailing rate of exchange for bitcoin as on the date of this order, whichever is the greater.

3. **First *alternative* claim to Claims 1 and 2**

3.1 That each of the dispositions of bitcoin made by MTI to the Defendant within 6 (six) months before the date of liquidation of MTI, as set out in the schedule annexed to the particulars of claim as annexure "**MTI-8**", is hereby set aside in terms of section 29 of the Insolvency Act.

3.2 The Defendant is ordered:

3.2.1 To return 1.52556112 bitcoin to the Plaintiffs; or

3.2.2 To pay to the Plaintiffs the sum of **R338 405.57** or the value of 1.52556112 bitcoin, calculated at the prevailing rate of exchange for bitcoin as on the date of this order, whichever is the greater.

4. **Second *alternative* claim to Claims 1 and 2 and to the first alternative claim**

4.1 That each of the dispositions of bitcoin made by MTI to the Defendant, as set out in the schedule annexed to the particulars of claim as annexure "**MTI-9**", is hereby set aside in terms of section 30 of the Insolvency Act.

4.2 The Defendant is ordered:

4.2.1 To return 1.52556112 bitcoin to the Plaintiffs; or

4.2.2 To pay to the Plaintiffs the sum of **R338 405.57** or the Rand value of 1.52556112 bitcoin, calculated at the prevailing rate of exchange for bitcoin as on the date of this order, whichever is the greater.

5. In respect of all claims above the Defendant be ordered to pay interest on such amount as which the Defendant is ordered to pay to the Plaintiffs at the prescribed rate of interest as at the date of this order, a *tempore mora.*

6. Costs of suit

7. Further and/or alternative relief.

SIGNED AT BELLVILLE ON THIS THE 22nd DAY OF JANUARY 2024.

PIERRE DU TOIT
(Attorney with right of appearance as required by Rule 18 of the Uniform Rules of

Court, read with Sections 25(3) and 114 of Act 28 of 2014 (previously Section 4(2) of Act 62 of 1995)

MOSTERT & BOSMAN

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Tyger Falls, Tygervalley,
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pierred@mbalaw.co.za

TO: **THE REGISTRAR OF THE**
HIGH COURT
CAPE TOWN

"MTI-1"

REPUBLIC OF SOUTH AFRICA

SERTIFIKAAT VAN AANSTELLING VAN LIKWIDATEUR

[Maatskappywet, No 61 van 1973 (soos gewysig)]

CERTIFICATE OF APPOINTMENT OF LIQUIDATOR

[Companies Act, No 61 of 1973 (as amended)]

NO: C000906/2020

Hierby word gesertifiseer dat:
This is to certify that:

1. BARNARD, JACOLIEN FRIEDA	ID. 8210030014085
2. BASSON, DEIDRE	ID. 7009290090087
3. BESTER, HERMAN	ID. 7009235139080
4. COOPER, CHAVONNES BADENHORST ST CLAIR	ID. 6905045153081
5. ROOS, CHRISTOPHER JAMES	ID. 8409215014080
6. VAN ROOYEN , ADRIAAN WILLEM	ID. 6911185280080
7. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	ID. XXXXXXXXXXXXXXXXXXXXX

aangestel is as Likwidateur met die magte soos uiteengesit in Artikel 386(1) van Wet No 61 van 1973 saamgelees met item 9 van Skedule 5 van Wet 71 van 2008 van die Maatskappy bekend as:

appointed as Liquidator with the powers as set out in Section 386(1) of Act 61 of 1973 read together with item 9 of Schedule 5 of Act 71 of 2008 of the Company known as:

MIRROR TRADING INTERNATIONAL (PTY) LIMITED T/A MTI 2019/205570/07

wat onder Likwidasie geplaas is
which has been placed under Liquidation 30-6-2021

van die Hoë Hof van Suid-Afrika,
by Order of the High Court of South Africa, WESTERN CAPE HIGH COURT (CAPE TOWN) Afdeling / Division

Geteken te
Signed at CAPE TOWN

op
on 11 NOVEMBER 2021

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2021 -11- 11
AM: INSOLVENT ESTATES 2
11 NOVEMBER 2021
MEESTER VAN DIE WES KAAP HOË HOF
DATUMSTEMPEL
DATE STAMP

DOJCD\HBOUWER
MEESTER VAN DIE HOË HOF VAN SUID-AFRIKA
MASTER OF THE HIGH COURT OF SOUTH AFRICA

URN: 8992020INS000906

"MTI-1.2"

J409

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

MASTERS CERTIFICATE

MIRROR TRADING INTERNATIONAL (PTY) LTD
C906/2020

This is to certify that

DANIEL SANDILE NDLOVU
&
KEVIN TITUS

are added as co-Liquidators in terms of section 374 the Companies Act 61 of 1973 with,

ADRIAAN WILLEM VAN ROOYEN
CHRISTOPHER JAMES ROOS
CHAVONNES BADENHORST ST CLAIR COOPER
HERMAN BESTER
DEIDRE BASSON
JACOLIEN FRIEDA BARNARD

ASST. MASTER OF THE HIGH COURT, CAPE TOWN

REGISTRAR OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2023 -04- 05
A/M: INSOLVENT ESTATES 8
MEESTER VAN DIE WES KAAP HOË HOF

"MTI-2"

MIRROR TRADING INTERNATIONAL (PTY) LTD - (IN LIQUIDATION)
MASTER'S REFERENCE NUMBER: C906/2020

RESOLUTIONS SUBMITTED AT THE SECOND MEETING OF CREDITORS AND MEMBERS, IN TERMS OF SECTION 402 OF THE COMPANIES ACT, ACT 71 OF 1973, AS AMENDED, TO BE HELD BEFORE THE MASTER OF THE HIGH COURT CAPE TOWN, ON FRIDAY, THE 10TH OF DECEMBER 2021 AT 09H00.

RESOLVED:

1. That all actions of whatsoever nature heretofore taken by the liquidators and also as set out in the report, to which these Resolutions are attached, be and are hereby confirmed, ratified and approved of.
2. That the liquidators be and are hereby granted the authority and shall be vested with all the powers mentioned in the Companies Act 61 of 1973, as amended.
3. That the liquidators be and are hereby authorized to engage the services of Attorneys, Accountants and/or Counsel and/or Recording Agents, as they may deem necessary the purpose of:
   a. taking any legal opinion that may be considered necessary in the interest of the estate;
   b. instituting or defending on behalf of the Company any action or other legal proceedings of a civil nature, and subject to the provisions of any law relating to criminal procedure, any criminal proceedings;
   c. holding enquiries and examinations in terms of Sections 415, 416, 417 and 418 of the Companies Act, 61 of 1973, as amended, or as read in conjunction with the Insolvency Act nr. 24 of 1936, as amended and to appoint attorneys and counsel and also accountants and any other advisers, to act on their behalf in regard to such enquiries and at the cost of the Company to assist them in regard to such enquiries, and particularly to hold an enquiry as envisaged in the report to creditors, to which these resolutions are attached;
   d. to draw any contracts and sign any documents as may be necessary;
   e. for any purpose, in doing searches at the Deeds Offices, Registrar of Companies and other registry, as they in his/their sole and absolute discretion may deem necessary, all costs so incurred to be costs in the liquidation;
   f. for any other purpose whatsoever, as they, in their sole discretion, may deem fit;
   g. that the liquidators be duly authorized to agree any tariff and/or scale of rates to be used in determination of any legal or other fees, and in their sole discretion to agree the quantum of such fees, which legal fees shall be on an attorney and own client basis;
   h. all costs incurred to be treated as administration costs of the estate;
4. That the liquidators be and are hereby authorized and empowered to investigate any apparent voidable and/or undue preference and/or any disposition of property, and to take any steps which they in their absolute discretion may deem necessary, including the institution of legal actions and the employment of attorneys and/or counsel to have these set aside, and to proceed to the final end or determination of any such legal actions or abandon the same at any time as they in their sole discretion may deem fit, all costs so incurred to be costs in the liquidation. The costs referred to herein being subject to the same conditions and/or he same scales as are set out above.

5. That the liquidators be and are hereby authorized to collect any outstanding debts due to the Company in liquidation, and for the purpose thereof, to sell or compound any of these debts for such sum, and on such terms and conditions, as they in their sole discretion may deem fit, or to abandon any claims which they in their sole discretion may deem to be irrecoverable, and to appoint debt collectors in their sole discretion to assist them in the recovery of outstanding debts, and to take all necessary steps on the terms and provisions as they in their sole discretion as liquidators may deem fit, to ensure the maximum debt collections, or to institute Legal Action and/or employ attorneys and/or counsel in connection with the recovery of the debts, and to proceed to the final end or determination of any such legal action instituted or to abandon the same at any time as they in their sole discretion may deem fit, all costs to incurred to be costs in the liquidation. The costs referred to herein being subject to the same conditions and on the same scales as are set out above.

6. That the liquidators be and are hereby authorized to sequestrate the estate of any person or liquidate any Company in order to recover any monies due to the Company where they consider/s it necessary and that the costs in relation thereto be costs in the liquidation. The costs referred to herein being subject to the same conditions and on the same scale as are set out above.

7. That the liquidators be and are hereby authorized to engage the services of bookkeepers, accountants and auditors, consultants, document managers, IT consultants and any other advisers to investigate and write up the books of the Company as may be required, and if necessary, to produce an audited balance sheet as at the date of liquidation, either for the purpose of investigating the affairs of the Company, establishing the claims of creditors, or any other purpose as they in their sole discretion may deem fit, all costs incurred in relation thereto to be costs in the liquidation. The liquidators, in their sole discretion, may agree the costs with the relevant service providers and advisers on behalf of the Company. The Liquidators be and are hereby authorized and instructed to pay the costs for and relating to preparing creditor claims and representing creditors, and preparing for same, at meetings and assisting in regard to the payment of their dividends, as a cost of administration from the assets of the estate. All costs incurred in connection with any such services and service providers to be treated as costs of the administration of the estate. The costs referred to herein being subject to the same conditions and on the same scale as are set out in 3.g above.

8. That the liquidators be and are hereby authorized to sell or in any other way dispose of any immovable or movable assets of the Company, whether as going concerns, or otherwise, or whether separately or jointly with any other person or corporate entity, and on such terms and conditions as the liquidators in their sole discretion may decide on and particularly in their sole discretion, should they decide to sell or otherwise dispose of any such asset, jointly with any other person or corporate entity, on the method and quantum of division, of the total consideration, by public auction, tender or private treaty and on such terms and conditions as the liquidators in their sole discretion may deem fit and any other costs thereof which they, in their sole discretion may deem fit and any other costs thereof which they, in their sole discretion cannot pass over, to be costs of liquidation.

9. That the Liquidators be and is/are hereby authorized to sell any immovable property as per the instructions given by the secured creditor at any given time. This includes the proceeding to public auction by the auctioneers nominated by the secured creditor. In such an event the secured creditor will have the opportunity to assess the offer and decide to buy the property in or instruct the liquidator to further market the property and / or proceed with a second auction at a later stage.

10. That the liquidators, in the case of the sale of any immovable property by the estate, and where the liquidators contract that they as sellers shall be entitled to nominate the conveyancers to do the conveyancing of the property to be purchaser, shall be entitled to instruct attorneys, to effect such registration of transfer on condition that the purchaser pays all cost or transfer and that the seller estate has no liability for such costs of transfer or any part thereof.

11. That the liquidators are furthermore authorized in their sole discretion to abandon any asset for which they can find no purchaser, or which is not practical to sell, the costs of which are the costs of the liquidation.

12. That in the event of any asset which is subject of a mortgage bond, pledge or any other form of security not realizing sufficient to pay the claim of the secured creditors, plus the pro rata share of the costs of administration in full, that the liquidators be and are hereby authorized in their discretion to sell such asset to the creditor concerned at an agreed valuation, subject to the payment by such creditor of pro rata of the costs of administration in terms of Section 89 of the Insolvency Act, as amended.

13. That the said liquidators be and are hereby authorized and empowered in their sole discretion to compromise or admit any claim against the Company, whether liquidated or unliquidated arising from any guarantee, damages claim or any other cause whatsoever, as a liquidated claim in terms of Section 78 (3) of the Insolvency Act, as amended, at such amount as may be agreed upon by both the creditor concerned and the liquidators, and to accept payment of any claims, due to the Company by way of delivery or issue of shares and to appoint any directors to any subsidiary companies, as the liquidators may deem necessary and to sell any subsidiaries on such terms and conditions as they in their sole discretion, on behalf of the Company, deem fit. In view of the large number of MTI members and the fact that back-office data is available, the liquidators be and are herby authorized and empowered to use the following procedure for proof of claims against the estate, instead of any other method or in addition thereto as they may decide namely:

a) Appoint a suitable data service provider with knowledge of insolvency claims to be provided with a copy the back-office database and to use that data for further analysis of what the claim of every MTI member should be, and which person received dispositions that may be set aside, with instructions to prepare for every MTI member a statement of transactions in a format that is easy to follow.

b) The data service provider to compare all existing claims to the result of the said statement of transactions and to provide a report with recommendations of which claims may be admitted at which amounts.

c) If the MTI member has already submitted a claim for an amount that agrees with the amount so recommended the liquidators may admit such claim at that amount.

d) If the MTI member has already submitted a claim for an amount that does not agree with the amount recommended, the liquidators must advise the MTI member accordingly and provide a copy of the aforesaid statement of transactions and invite the member to provide further information and debate the correct amount of the claim according to such suitable procedure as may be determined by the liquidators on a case-by-case basis. Such advice should also be digital only without paper, to be produced by the data service provider in such format as directed by the liquidators.

e) For those members that have not yet submitted claims, the liquidators must send to each such member a copy for the aforesaid statement of transactions and invite the member to indicate whether the member agrees with the statement and whether the member wishes his or her claim to be admitted against the estate.

f) Such statements or claims will be kept in digital format only and need not be printed. They must however all be saved in an archive PDF format and retained as part of the records of the estate.

14. That the liquidators are authorized to take all such other steps and to do such other acts as they in their sole discretion on behalf of the Company, may deem fit, and at the cost of the Company.

15. That the Liquidators be and are hereby authorized to make application for the destruction of the books and records of the Company, six months after confirmation of the Final Account;

16. That any excess in premiums and stamp duty on Security Bonds or Asset Insurance, which is more than that provided for in Rule 31, laid down by the Master of the High Court, be and are hereby authorized as an administration expense of the estate.

17. That the actions of the liquidators in employing nightwatchmen/security guards to protect the premises and assets of the Company, be and are hereby approved and ratified, all costs relating thereto, to be the costs in the liquidation.

18. That the actions of the Liquidator in advertising, calling for tenders for the purchase of the business and/or assets of the Company, be and are hereby approved and ratified, all costs so incurred to be costs in the liquidation.

19. That the actions of the provisional liquidators and/or liquidators in having disposed of assets, shares and loan accounts, prior to the date of this meeting, be and are hereby approved and ratified, all costs incurred in relation thereto to be costs of the liquidation.

20. That the actions of the provisional liquidators and/or liquidators in continuing the business of the Company and retaining staff be and are hereby approved and ratified, all costs so incurred to be the costs of liquidation.

21. That the actions of the provisional liquidators and/or liquidators in employing salesmen and administration personnel and generally to protect the interests of creditors be and are hereby approved and ratified and the fees of such personnel to be costs in the liquidation.

22. That the liquidators be and are hereby authorized and empowered to continue such the business of the Company from the date of liquidation until such time as creditors instruct them to the contrary or until such time as the assets are realized and to do all things which they in their sole discretion may deem necessary for the successful continuation of the business (all costs incurred to be costs in the liquidation) and without restricting the generalities of their powers, he/they are hereby specifically authorized;

22.1 To discharge and engage employees and to fix their remuneration;

22.2 To continue the lease of the Company's premises until such time as it is decided to determine the lease.

22.3 The employ persons to undertake the physical count and valuation of stock in trade at the beginning and end of any trading period subsequent to the date of liquidation of the Company.

22.4 To employ persons to prepare an inventory or inventories of all movable assets of the Company.

22.5 Generally, to do all things which they in their discretion may deem necessary to determine the lease.

23. That the liquidators and/or liquidators are hereby indemnified against any losses and/or claims for damages resulting from the continuation of the Company's business, all such losses and damages to be costs in the liquidation.

24. That the liquidator/s are hereby authorized to submit for determination and/or arbitration any dispute concerning the estate or any claim or demand by or upon the estate and that any costs so incurred to be costs of administration and paid for by the estate.

25. That the further administration of the affairs of the Company be left entirely in the hands and at the discretion of the liquidators.

26. That the liquidators are hereby authorized to appoint a representative on behalf of creditors to attend creditors meetings and tender the cost.

27. It is resolved that the Liquidators "out of pocket" expenses be regarded as items of expenditure and may be charged as administration costs that would include: -

The costs of agents to obtain: -

27.1 ITC searches and documents

27.2 Credit Inform searches

27.3 Cipro searches

27.4 Deeds Office searches

27.5 Natis document searches

28. The costs of the use of couriers for the delivering and acceptance of any document or parcel on behalf Estate when the local postal service is not used;

29. Travelling expenses which include time, fuel, kilometers, toll fees, airfares and accommodation.

30. Interest be charged on all funds and monies advanced by any person or company at prime rate till payment thereof.

The liquidator's Resolutions for adoption by creditors were presented and approved of.

ADOPTED ON BEHALF OF CREDITORS:

Ex liquidation, present at and meeting, not voting
A.O Santunger

ADOPTED ON BEHALF OF MEMBERS:

PRESIDING OFFICER:

MASTER OF THE WESTERN CAPE HIGH COURT
CAPE TOWN
2022 -02- 04
A.M: INSOLVENT ESTATES
MEESTER VAN DIE WES KAAP HOË HOF

6

"MTI - 3"

X

29-12-2020

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 19201/2020

BEFORE THE HONOURABLE MR JUSTICE ROGERS
AT CAPE TOWN: ON TUESDAY, 29 DECEMBER 2020

In the matter between:

ANTON FRED MELCHIOR LEE — Applicant

and

MIRROR TRADING INTERNATIONAL (PTY) LIMITED — First Respondent
T/A MTI
(REGISTRATION NUMBER: 2019/205570/07)
Registered office at: 43 Plein Street
Unit 1
First Floor
Stellenbosch
Western Cape

FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) — Second Respondent
Private Bag X9020, Cape Town 8000

2020 -12- 29
DRAFT ORDER
WCD-01

Having read the documents filed of record and having heard Counsel for the Applicant, it is hereby ordered that:

1. The First Respondent is hereby placed under provisional liquidation in the hands of the Master of the High Court, Cape Town.

2. A rule *nisi* is hereby issued calling upon all persons interested to show cause, if any, on Monday, 1 March 202[illegible] at 10h00, or as soon thereafter as the application may be heard, why a final order should not be granted in the following terms:

2.1 That the First Respondent be placed under Final Liquidation; and

2.2 That the costs of this application shall be costs in the Liquidation.

3. A copy of this provisional order is to be served as follows:

3.1 On the Respondent at its principal place of business at 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape;

3.2 On the employees of the First Respondent, if any, at 43 Plein Street, Unit 1, First Floor, Stellenbosch, Western Cape; And at 341 Beyers Naude Drive, Randburg, Gauteng.

3.3 By one publication in each of the *Sunday Times* and *Rapport* newspapers respectively; and

3.4 On the South African Revenue Service, Cape Town at 22 Hans Strijdom Avenue, Cape Town.

4. The Registrar of this Honourable Court shall transmit a copy of this provisional order to the Sheriff of the province in which the registered office of the First Respondent is situated and to the Sheriff of every province in which it appears the First Respondent owns businesses.

5. The Sheriff of this Honourable Court shall attach all property that appears to belong to the First Respondent and transmit to the Master an inventory of all property attached by him or her in terms of section 19 of the Insolvency Act 24 of 1936.

BY ORDER OF THE COURT

Private Bag X9024, Cape Town, 8000

2020 -12- 28

WCD-D10

COURT REGISTRAR

VEZI & DEBEER INC: YASIN ALLI (REF: YALLI) Yasin@vezidebeer.co.za
3RD FLOOR, EQUITY HOUSE, 107 ST GEORGES MALL, CAPE TOWN, TEL: (012) 361 2746
HC BOX: 763

"MTI-4"

Final Liquidation

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case No: 19201/2020

BEFORE THE HONOURABLE ACTING JUSTICE DE WET
CAPE TOWN: WEDNESDAY, 30 JUNE 2021

In the matter between:

ANTON FRED MELCHIOR LEE — Applicant

and

MIRROR TRADING INTERNATIONAL (PTY) LTD t/a MTI — First Respondent
(Registration Number: 2019/205570/07)
Registered Office at 43 Plein Street, Unit 1
1st Floor, Stellenbosch
Western Cape

FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) — Second Respondent

CLYNTON HUGH MARKS — Third Respondent

and

ADRIAAN WILLEM VAN ROOYEN N.O. — First Proposed Intervening Party
HERMAN BESTER N.O. — Second Proposed Intervening Party
CHRISTOPHER JAMES ROOS N.O. — Third Proposed Intervening Party
JACOLIEN FRIEDA BARNARD N.O. — Fourth Proposed Intervening Party
DEIDRE BASSON N.O. — Fifth Proposed Intervening Party

ORDER

6

Having heard Counsel for Applicant, First and Third Respondents as well as First to Fifth Proposed Intervening Parties;

IT IS ORDERED THAT:

1. The application for the reconsideration of the provisional order in terms of Rule 6(12)(c) is dismissed;

2. The *rule nisi* granted on 29 December 2020, is made absolute and First Respondent is placed under Final Liquidation;

3. The costs of this application, are costs in the administration of First Respondent;

4. The costs occasioned by the intervention of Third Respondent, as taxed on an attorney and client scale, be paid by Third Respondent;

5. The application for intervention by First to Fifth Proposed Intervening Parties as well as their counter application is postponed in terms of an order issued separately from this order for sake of convenience.

BY ORDER OF THE COURT

COURT REGISTRAR

763 Coombe Commercial
c/o Vezi & De Beer Inc
CAPE TOWN

1	2	3	4	5	6	7	8		9		10		11	
							SECTION 26 CLAIM		SECTION 29 CLAIM LESS SECTION 26		SECTION 29 CLAIM		SECTION 30 CLAIM	
NO	USER ID	DATE	BTC IN/OUT	BTC AMOUNT	RAND VALUE OF BTC	RUNNING BALANCE	BTC	RAND	BTC	RAND	BTC	RAND	BTC	RAND
1	6345269	2020/05/01 00:00	In	0.05705893	R9 697.28	0.05705893								
2	3991793	2020/05/03 00:00	In	0.22440714	R38 780.25	0.28146607								
3	9489706	2020/05/05 00:00	In	0.05705893	R9 592.35	0.338525								
4	3991793	2020/06/21 00:00	In	0.59995971	R97 873.23	0.93848471								
5	6345269	2020/10/21 14:11	Out	-0.26	R56 030.00	0.67848471			0.26	R56 030.00	0.26	R56 030.00	0.26	R56 030.00
6	9489706	2020/10/22 12:37	Out	-0.08932945	R19 084.34	0.58915526			0.08932945	R19 084.34	0.08932945	R19 084.34	0.08932945	R19 084.34
7	3991793	2020/10/29 10:52	Out	-1.17623167	R263 291.23	-0.58707641	0.58707641	R131 412.94	0.58915526	R131 878.28	1.17623167	R263 291.23	1.17623167	R263 291.23
						0								
TOTAL:						**0**	**0.58707641**	**R131 412.94**	**0.93848471**	**R206 992.62**	**1.52556112**	**R338 405.57**	**1.52556112**	**R338 405.57**

MTT-5

"MTI-6"

1	2	3	4	5	6	
					SECTION 26 CLAIM	
NO	USER ID	DATE	BTC AMOUNT	RAND VALUE OF BTC	BTC	RAND
1	6345269	2020/05/01 00:00	0.05705893	R9 697.28		
2	3991793	2020/05/03 00:00	0.22440714	R38 780.25		
3	9489706	2020/05/05 00:00	0.05705893	R9 592.35		
4	3991793	2020/06/21 00:00	0.59995971	R97 873.23		
5	6345269	2020/10/21 14:11	-0.26	R56 030.00		
6	9489706	2020/10/22 12:37	-0.08932945	R19 084.34		
7	3991793	2020/10/29 10:52	-1.17623167	R263 291.23	0.58707641	R131 412.94
TOTAL:					**0.58707641**	**R131 412.94**

"MTI-7"

1	2	3	4	5	6	
					SECTION 29 CLAIM LESS SECTION 26	
NO	USER ID	DATE	BTC AMOUNT	RAND VALUE OF BTC	BTC	RAND
5	6345269	2020/10/21 14:11	-0.26	R56 030.00	0.26	R56 030.00
6	9489706	2020/10/22 12:37	-0.08932945	R19 084.34	0.08932945	R19 084.34
7	3991793	2020/10/29 10:52	-1.17623167	R263 291.23	0.58915526	R131 878.28
TOTAL:					0.93848471	R206 992.62

"MTI-8"

1	2	3	4	5	6	
					SECTION 29 CLAIM	
NO	USER ID	DATE	BTC AMOUNT	RAND VALUE OF BTC	BTC	RAND
5	6345269	2020/10/21 14:11	-0.26	R56 030.00	0.26	R56 030.00
6	9489706	2020/10/22 12:37	-0.08932945	R19 084.34	0.08932945	R19 084.34
7	3991793	2020/10/29 10:52	-1.17623167	R263 291.23	1.17623167	R263 291.23
TOTAL:					**1.52556112**	**R338 405.57**

"MTI-9"

1	2	3	4	5	6	
					SECTION 30 CLAIM	
NO	USER ID	DATE	BTC AMOUNT	RAND VALUE OF BTC	BTC	RAND
1	6345269	2020/05/01 00:00	0.05705893	R9 697.28		
2	3991793	2020/05/03 00:00	0.22440714	R38 780.25		
3	9489706	2020/05/05 00:00	0.05705893	R9 592.35		
4	3991793	2020/06/21 00:00	0.59995971	R97 873.23		
5	6345269	2020/10/21 14:11	-0.26	R56 030.00	0.26	R56 030.00
6	9489706	2020/10/22 12:37	-0.08932945	R19 084.34	0.08932945	R19 084.34
7	3991793	2020/10/29 10:52	-1.17623167	R263 291.23	1.17623167	R263 291.23
TOTAL:					**1.52556112**	**R338 405.57**

"FA 8"

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 1612/24

In the matter between:

HERMAN BESTER N.O	First Plaintiff
ADRIAAN WILLEM VAN ROOYEN N.O	Second Plaintiff
CHRISTOPHER JAMES ROOS N.O	Third Plaintiff
JACOLIEN FRIEDA BARNARD N.O	Fourth Plaintiff
DEIDRE BASSON N.O	Fifth Plaintiff
CHAVONNES BADENHORST ST CLAIR COOPER N.O	Sixth Plaintiff
SANDILE DANIEL NDLOVU N.O	Seventh Plaintiff
KEVIN TITUS N.O	Eighth Plaintiff
And	
ANMARIE BARNARD	Defendant

PLEA

Defendant pleads as follows to Plaintiffs claim:

SPECIAL PLEA 1

1.

The Plaintiffs launched an application in the High Court of South Africa under case number 15426/2021 seeking an order for the following, namely:-

1.1. Declaring the business model of MTI as an illegal and/or unlawful scheme and/or that MTI at all relevant times operated an illegal and/or unlawful business.

1.2. Declaring all agreements purportedly concluded between MTI and its investors in respect of the trading/management/investment of Bitcoin for the purported benefit of the investors, to be unlawful and void *ab initio*.

1.3. Declaring that MTI is factually insolvent in that the value of its liabilities exceeded the value of its assets since 18 August 2019 until the date of its winding-up on 29 December 2020.

1.4. Declaring any and all dispossessions, whether by means of payment in flat currency or by means of a transfer of Bitcoin (or any other cryptocurrency) made by or on behalf of MTI or any of its investors or other third party, as payment or part-payment of purported profits, referral commissions or any other remuneration in respect of and pursuant to the unlawful investment scheme perpetrated by MTI, to be dispossessions without value, as defined in section 2, read with section 26(1) of the Insolvency Act No. 24 of 1936 (as amended) ("the Insolvency Act").

1.5. Declaring any and all dispossessions, whether by means of a payment in flat currency or by means of a transfer of Bitcoin (or any other cryptocurrency), made by or on behalf of MTI or any of its investors or any third party, as payment or part-payment of any purported claim or entitlement pursuant to the unlawful investment scheme, within 6 (six) months before the *concursus creditorum* i.e. all dispossessions since 23 June 2020, to be dispossessions which had the effect of preferring one or more of MTI's creditors above others, as defined in section 2, read with section 29(1) of the Insolvency Act, and that such dispossessions were not

made in the ordinary course of business as provided for in section 29(1) of the Insolvency Act.

1.6. Leave should be granted to the liquidators of MTI to approach the court on the same papers, duly amplified where necessary, for orders setting aside specific dispossessions as described in 4.4 and 4.5 above, in terms of sections 26 and/or 29 of the Insolvency Act and for orders declaring that the liquidators of MTI are entitled to recover the aforesaid dispossessions, alternatively the value thereof at the date of each dispossession or the value thereof at the date on which the respective dispossessions are set aside, whichever is the higher, as provided for in section 32(3) of the Insolvency Act.

2.

This relief was instituted by the Plaintiffs on during July 2021 and all investors in MTI such as the Defendant were joined in the aforesaid application and are bound by the judgment of that court.

3.

The relief which sought by the Plaintiffs in the application relate to the exact same facts and parties and consequences as the claims made by the Plaintiffs in the particulars of claim to this action.

4.

It is common cause that whilst the relief sought in paragraphs 1 and 2 above was granted (and the remaining relief sought was dismissed) the relief granted in paragraphs 1 and 2 is the subject of appeal remedies being invoked by Clynton Marks the sixth Respondent in the aforesaid application.

5.

There is accordingly still litigation pending between the parties on the same cause of action and in respect of the same subject matter which cannot be litigated upon in this action.

6.

The Defendant accordingly prays that Plaintiffs present action be stayed pending the final determination of the aforesaid application.

7.

In the premises, the issuing of the summons is premature, alternatively irregular and the costs should include the cost consequent upon the employment of senior counsel and on the attorney and own client scale.

SPECIAL PLEA 2

8.

The Plaintiffs, in all their claims and alternative claims, seek form the Defendant the return of bitcoin that the Defendant allegedly received or, in default thereof, that Defendant is ordered to pay Plaintiffs the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, whichever value is higher.

9.

Such claims are premised on Section 32(3) of the Insolvency Act

10.

During 2023 the Plaintiffs, in their capacities as the duly appointed joint liquidators of MTI, approached the High Court of South Africa, Western Cape Division, Cape Town in terms of Section 387 of the Companies Act, 61 of 1973 for directions relating to the handling of claims by investors and/or against investors of MTI.

11.

On the 9th of November 2023 the Court directed the liquidators to treat bitcoin in the administration of the estate of MTI as intangible assets that constitute property as defined in the Insolvency Act.

12.

The Court further directed that the value of investments of bitcoin in the scheme should be calculated in rand value, as at the date upon which the relevant investor(s) made the relevant investment in the scheme and further that the value of returns of bitcoin to investors should be calculated in rand value, as at the date upon which the relevant return or portion thereof was paid by MTI to the relevant investor.

13.

In the premises Plaintiffs are not entitled to claim from Defendant the value of bitcoin as at the date of disposition or on the date which the dispositions are set aside, whichever value is higher.

14.

In the premises the claims of the Plaintiffs insofar as they rely on Sectio 32(3) of the Insolvency Act stands to be dismissed with costs.

DEFENDANTS PLEA AD SERIATIM TO PARTICULARS OF CLAIM

15. AD PARA 1 TO 14

The Defendants admits these allegations.

16. AD PARA 15

The Defendant denies these all these allegations.

17. AD PARA 16 TO 19

These allegations are admitted.

18. AD PARA 20

18.1 These allegations are denies the allegations in these paragraphs.

18.2 Defendant pleads in in particular that MTI was liquidated on the basis that it was just and equitable to do so.

19. AD PARA 21 & 22

The Defendant admits that they invested in MTI. The Defendant further denies all other allegations.

20. AD PARA 23 & 24

Defendant denies the allegations in these paragraphs and in particular denies the correctness of the content of the schedule annexed to the particulars of claim.

21. AD PARA 25

21.1 These allegations are denied.

21.2 Alternatively, the Defendant pleads that in the event that any dispositions are to be set aside, the claim must be reduced by any transfer of bitcoin by the Defendant before and/or after the date of such dispositions to MTI.

22. AD PARA 26

22.1 Defendant denies the allegations in these paragraphs.

22.2 Defendant in particular denies the correctness of the content of the schedule annexed to the particulars of claim.

22.3 Defendant further denies that the Plaintiffs are entitled to rely on the provisions of Section 32(3) of the Insolvency Act.

23. AD PARA 27

23.1 Defendant denies the allegations in these paragraphs.

23.2 Defendant in particular denies the correctness of the content of the schedule annexed to the particulars of claim.

23.3 Defendant further denies that the Plaintiffs are entitled to rely on the provisions of Section 32(3) of the Insolvency Act.

24. AD PARA 28

24.1 Defendant denies the allegations in these paragraphs

24.2 Defendant in particular denies the correctness of the content of the schedule annexed to the particulars of claim.

24.3 Defendant further denies that the Plaintiffs are entitled or to rely on provisions of Section 32(3) of the Insolvency Act.

25. AD PARA 29

25.1 The Defendant denies the allegations in these paragraphs.

25.2 The Defendant denies in particular the correctness of the contents of this schedule annexed to the particulars of claim.

25.3 The Defendant further denies that the Plaintiffs are entitled to rely on the provisions of Section 32(3) of the Insolvency Act.

WHEREFORE the Defendant prays that all Plaintiffs claims be dismissed with costs.

DATED at **HILLCREST** on this 4TH day of **August 2024.**

J.A. LISTER
DEFENDANT'S ATTORNEYS
(ATTORNEY WITH RIGHT OF APPEARANCE
AS REQUIRED BY RULE 18 OF THE
UNIFORM RULES OF COURT READ
WITH SECTIONS 25(3) AND 114 OF Act 28 of 2014.)

LISTER & CO
DEFENDANT'S ATTORNEY with right of representation to
Office suite 2, Gate 4
Marwick Clocktower Building
1 Lucas Drive
Hillcrest, KwaZulu-Natal
Tel: 031 765 7477//Fax: 031 765 7476
(REF: JA LISTER/kk/mat6143
Email: john@listerco.co.za and admin@listerco.co.za

To: The Registrar of the above Honourable Court
CAPE TOWN

And To: **MOSTERT AND BOSMAN**
Plaintiffs attorneys
4th Floor, Madison Square
Cnr Carl Cronje & Tygerfalls blvd
Tygervalley, Bellville
Ref: WJ4599
Email: pierred@mbalaw.co.za

SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NO: 947/2023
WCC CASE NO: 15426/2021

BEFORE THE HONOURABLE JUSTICES GOOSEN JA AND MUSI AJA

On the 22nd NOVEMBER 2023

In the application between:

CLYNTON HUGH MARKS	Applicant
and	
HERMAN BESTER N.O.	1st Respondent
ADRIAAN WILLEM VAN ROOTEN	2nd Respondent
CHRISTOPHER JAMES ROOS N.O.	3rd Respondent
JACOLIEN FRIEDA BARNARD N.O.	4th Respondent
DEIDRE BASSON N.O.	5th Respondent
CHAVONNES BADENHORST ST CLAIR COOPER N.O.	6th Respondent
DANIEL SANDILE NDLOVU N.O.	7th Respondent
KEVIN TITUS N.O. (The joint final liquidators of MIRROR TRADING INTERNATIONAL (PTY) LTD)	8th Respondent

Having considered the Notice of Motion and the other documents filed.

IT IS ORDERED THAT:

1. Condonation as applied for is granted. The applicant for condonation is to pay the costs of the application.
2. The application for leave to appeal is dismissed with costs on the grounds that there is no reasonable prospect of success in an appeal and there is no other compelling reason why an appeal should be heard.

BY ORDER OF THIS COURT

p.p.
COURT REGISTRAR
C L DE WEE (Ms)

REGISTRAR OF THE SUPREME COURT OF APPEAL
SOUTH AFRICA

PO Box 268, Bloemfontein 9301

2023 -11- 30

SCA-002

REGISTRAR OF THE SUPREME COURT OF APPEAL
SOUTH AFRICA

"FA10" 13

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: _____

The application between:

H BESTER N.O.	First Applicant
AW VAN ROOYEN N.O.	Second Applicant
CJ ROOS N.O.	Third Applicant
JF BARNARD N.O.	Fourth Applicant
D BASSON N.O.	Fifth Applicant
CBS COOPER N.O.	Sixth Applicant

(cited in their capacities as the joint liquidators of Mirror Trading International (Pty) Ltd [in liquidation])

and

THE MASTER OF THE HIGH COURT, CAPE TOWN	Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HERMAN BESTER N.O.

do hereby make an oath and say that:

1. I am an insolvency practitioner and liquidator of Tygerberg Trustees, First Floor, Cascade Terraces, Tyger Waterfront, Bellville, Western Cape and I depose to this application in my capacity as one of the duly appointed joint

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instituted in terms of sections 26 and 29 or 30 and/or 31 of the Insolvency Act, should be rejected;

120.6.20.2. the Liquidators should pursue the Class 3 Investors in respect of all transfers made to these Investors by the Company, including in respect of the Profit(s), in terms of section 26 and 29 or 30 and/or 31 of the Insolvency Act;

120.6.20.3. the Liquidators, once successful in procuring return of the subject disposition(s), should thereafter allow the affected Class 3 Investors a further opportunity to prove a claim in the estate, arising from the Company being revested with their initial investment into the Scheme, but not the Profit;

120.6.20.4. For the purpose of calculating a claim by a Class 3 Investor against the estate, pursuant to returning the disposition(s) to the liquidators as explained in paragraph 120.6.20.3 above, the value of a Class 3 investor's investment in the Scheme should be calculated in Rand value, as at the date upon which the relevant creditor(s) made their investments in the Scheme and the value of a Class 3 Investor's reimbursement in respect of their initial investment and/or the Profit should be calculated in Rand value as

at the date upon which the relevant creditor(s) received same from the Company.

120.6.20.5. the Liquidators should not permit, or rather should reject, any claim in terms of which Profit is claimed from the estate – such a claim will in the circumstances be statutorily excluded in terms of section 26(2) of the Insolvency Act.

120.7. As previously advised, the basis for the Company's liability towards Investors will change if the investment agreements are not void *ab initio*.

120.8. With the relationship between the Company and each Investor being regulated by contract, on this construction, Investors will be required to formulate their claims against the Company in compliance with the MTI agreement, which, in principle, recognise several possible permutations of Creditors.

120.9. The issue of a possible set-off of Returns or Profits that were transferred to an Investor, from an Investor's claim against the Company, does not enter the debate where the relationship between the Company and the Investors are contractual. The exception would, naturally, be when there was perhaps an overpayment of sorts, and a mutuality of debts is established.

120.10. That being said, the Investors will in the Second Scenario acquire the status of a creditor of the Company on a contractual basis and

and that investors be advised that they have the right to participate in the proceedings and to place their views before the Honourable Court on the return day of the Provisional Order.

153. In addition to the foresaid, we propose that the Provisional Order also be published in two nationally circulated newspapers.

154. The accompanying notice of motion provides for notice to interested and affected persons, particularly investors, in the aforesaid manner, which we submit is the only meaningful way, the circumstances of this matter, that presents with any prospect of effective notice of this application and the Provisional Order, to ensure that this application is brought to the attention of Investors.

155. We verily believe that service contemplated aforesaid is the most expeditious and effective manner in which the Provisional Order and this application can and should be served.

[H] CONCLUSION:

156. It is submitted that a proper case is made out for such relief to ensue, in the circumstances of this matter.

DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at BELLVILLE on this the 17th day of AUGUST 2022, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Ex Officio COMMISSIONER OF OATHS (RSA)
CHARL THOMAS HAMBRIDGE
(Member) Chartered Management Accountant
Business Consultant
CTH Consulting
25 Dolfyn Street, Yzerfontein
Western Cape, 7351

"FAII"

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 7124/2024

In the matter between:

HERMAN BESTER N.O	First Plaintiff
ADRIAAN WILLEM VAN ROOYEN N.O	Second Plaintiff
CHRISTOPHER JAMES ROOS N.O	Third Plaintiff
JACOLIEN FRIEDA BARNARD N.O	Fourth Plaintiff
DEIDRE BASSON N.O	Fifth Plaintiff
CHAVONNES BADENHORST ST CLAIR COOPER N.O	Sixth Plaintiff
SANDILE DANIEL NDLOVU N.O	Seventh Plaintiff
KEVIN TITUS N.O	Eighth Plaintiff
And	
EVELYN DU RAND	Defendant

PLEA

Defendant pleads as follows to Plaintiffs claim:

SPECIAL PLEA OF PRESCRIPTION

1.1 The alleged debt sued for by the Plaintiff's is a debt within the meaning and effect of Section 11 (d) of the Prescription Act 68 of 1969 (the act) in terms of which debts prescribe after a period of three years.

1.2 Section 12 (1) of the Act provides that prescription shall begin to run as soon as the debt is due.

1.3 Section 12 (2) of the act provides however that a debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and facts from which the debt arose; provided the creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

1.4 Mirror Trading International (in liquidation) (the company) as represented by its directing minds namely the duly appointed provisional liquidators and the (final) liquidators appointed thereafter were granted extended powers by the court on the 22nd of January 2021 which included the power and authority to institute legal action against debtors.

1.5 Accordingly as from the 22nd of January 2021 the Company through the liquidators aforementioned were duly authorized to sue the defendant as a debtor and had knowledge of the identity of the defendant and the facts from which the alleged debt arose as at 22nd January 2021, alternatively had the Company through its directing minds aforesaid exercised reasonable care it could and should have acquired such knowledge on or before the 1st April 2024 and is therefore deemed to have had such knowledge by then.

1.6 In as much as the summons in this matter was served on the 23rd April 2024 after a period of 3 years and after the dates referred to in 1.5 above, the alleged debt has become prescribed in terms of Section 11 (d) read with Section 12 (3) of the act.

SPECIAL PLEA

2. The Plaintiffs in all their claims and alternative claims seek from the defendant the return of bitcoin that the Defendant allegedly received or, in default thereof that Defendant is ordered to pay the value of such bitcoin as at the date of disposition or on the date on which the dispositions are set aside, which ever value is higher.

3. Such claims are premised on Section 32(3) of the Insolvency Act.

4. During 2023 the Plaintiffs in their capacities as the duly appointed joint liquidators of MTI approached the High Court of South Africa, Western Cape division, Cape Town under case number 13721/2022 in terms of Section 387 of the Companies Act, 61 of 1973 for directions relating to the handling of claims by investors and/or against the investors of MTI.

5. On the 9th November 2023 the Court directed the liquidators to treat bitcoin in the administration of the estate of MTI as intangible assets that constitute property as defined in the Insolvency Act.

6. The Court further directed that the value of investments in bitcoin in the scheme should be calculated in rand value as at the date upon which the relevant investor (s) made the relevant investment in the scheme and further that the value of returns of bitcoin to investors should be calculated in rand value as at the date upon which the relevant return or portion thereof was paid by MTI to the relevant investor.

7. In the premises plaintiffs are not entitled to claim from defendant the value of bitcoin as at the date of disposition or on the date of which dispositions are set aside which ever value is higher.

8. In the premises the claims by the plaintiffs in so far as they rely on Section 32(3) of the Insolvency Act stand to be dismissed with costs.

DEFENDANTS PLEA AD SERIATUM TO PARTICULARS OF CLAIM

9. AD PARA 1 TO 12

These allegations are admitted.

10. AD PARA 13

The Defendant admits that there was a resolution to the effect as per annexure MTI 2, but denies that the Plaintiffs were only authorised to institute legal action from the date of such resolution and the Defendant pleads that the Plaintiffs were granted authority by the Court on the 21st January 2021 inter alia to institute action against debtors.

11. AD PARA 14

The Defendant denies these allegations and avers that the provisional liquidators had authority institute to legal action as pleaded in paragraph 10 above.

12. AD PARA 15 TO 19

These allegations are admitted.

13. AD PARA 20

13.1 These allegations are denied.

13.2 Defendant pleads in in particular that MTI was liquidated on the basis that it was just and equitable to do so.

14. AD PARA 21 and 22

Save to admit that the Defendant opened, controlled transacted for her own benefit in the account with ID and user name referred to in 21.1, the Defendant denies that this account was held at MTI and further denies the remaining allegations.

15. AD PARA 23, 24 & 25

Defendant denies the allegations in these paragraphs and in particular denies the correctness of the content of the schedule annexed to the particulars of claim.

16. AD PARA 26

16.1 These allegations are denied.

16.2 Alternatively, the Defendant pleads that in the event that any dispositions are to be set aside the claim must be reduced by any transfer of bitcoin by the Defendant before and/or after the date of such dispositions to MTI.

17. AD PARA 27

17.1 Defendant denies the allegations in these paragraphs.

17.2 Defendant in particular denies the correctness of the content of the schedule annexed to the particulars of claim

17.3 Defendant further denies that the Plaintiffs are entitled to rely on the provisions of Section 32(3) of the Insolvency Act

18. AD PARA 28

18.1 Defendant denies the allegations in these paragraphs

18.2 Defendant in particular denies the correctness of the content of the schedule annexed to the particulars of claim.

18.3 Defendant further denies that the Plaintiffs are entitled or to rely on provisions of Section 32(3) of the Insolvency Act.

19. AD PARA 29

19.1 The Defendant denies the allegations in these paragraphs.

19.2 The Defendant denies in particular the correctness of the contents of this schedule annexed to the particulars of claim.

19.3 The Defendant further denies that the Plaintiffs are entitled to rely on the provisions of Section 32(3) of the Insolvency Act.

WHEREFORE the Defendant prays that all Plaintiffs claims be dismissed with costs.

DATED at **HILLCREST** on this **18th** day of **September 2024.**

J.A. LISTER
DEFENDANT'S ATTORNEYS
(ATTORNEY WITH RIGHT OF APPEARANCE
AS REQUIRED BY RULE 18 OF THE
UNIFORM RULES OF COURT READ
WITH SECTIONS 25(3) AND 114 OF Act 28 of 2014.)

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DEFENDANT'S ATTORNEY with right of representation to
Office suite 2, Gate 4
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Hillcrest, KwaZulu-Natal
Tel: 031 765 7477//Fax: 031 765 7476
(REF: JA LISTER/kk/535
Email: john@listerco.co.za and admin@listerco.co.za

To: The Registrar of the above Honourable Court
CAPE TOWN

And To: **MOSTERT AND BOSMAN**
Plaintiffs attorneys
4th Floor, Madison square
Cnr Carl Cronje & Tygerfalls blvd
Tygervalley, Bellville
Email: pierre@mbalaw.co.za

Ref: WJ6156

"FA 12"

1893 EST.

MOSTERT & BOSMAN

ATTORNEYS | TRUSTED ADVICE BY COMMITTED PEOPLE

LISTER & CO

FOR ATTENTION: MR JOHN LISTER

BY E-MAIL: admin@listerco.co.za

Date: 26 July 2024

Our Ref: P DU TOIT/Antoinette/WI7913

Email: antoinettee@mbalaw.co.za

Your Ref:

Dear Sir

MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)

1. We refer to the above, as well as the numerous matters in which we and other firms represent the Plaintiffs and your office represents Defendants in respect of summonses issued in various High Court divisions throughout South Africa.

2. We confirm our instructions to attend to the consolidation (and, where applicable, transfer from other divisions to the Western Cape Division of the High Court) of all those opposed matters where you are representing the Defendants. Although not yet finally confirmed, it may also include those matters where other attorneys are representing the Plaintiffs.

3. As previously discussed informally, we would prefer a negotiated and agreed process in order to achieve the above. However, should we not be able to reach an agreement, our clients' rights to formally apply for the transfer of cases to the Western Cape Division in terms of Section 27 of the Superior Courts Act and to apply for the consolidation of matters in terms of the provisions of Rule 11 of the Uniform Rules of Court, are reserved.

1893 EST.

4th Floor, Madison Square, Cnr of Carl Cronje & Tygerfalls Boulevard, Tygerfalls, Tyger Waterfront, Bellville, South Africa
PO Box 3355, Tyger Valley, 7536 | Docex 152, Cape Town | info@mbalaw.co.za | www.mbalaw.co.za
t +27(0)21 914 3322

4. What we also want to achieve by agreement between the parties, is to formulate:

4.1 a universal set of pleadings;

4.2 the specific factual issues in dispute; and

4.3 the legal issues to be determined by the court in order to hopefully limit the scope of evidence that will have to be led at a trial.

5. We also propose that those matters where the specific quantum of bitcoin involved, or the ownership of a specific wallet is disputed, be identified and that a speedy and cost-effective way of resolving those disputes be discussed. They may, for example, be referred to an insolvency interrogation, combined with a mediation process, to be dealt with as a separate process in an attempt to prevent unnecessary costly litigation in respect of those issues that the parties should be able to resolve speedily through the proper exchange of relevant information.

6. We also request your cooperation to jointly request the Judge President of the Western Cape Division to allocate preferential pre-trial and trial dates, once the universal pleadings, admissions and further particulars and expert notices have been finalised.

7. Please note that this letter is intended to initiate a discussion in order to attempt reaching an agreement along the lines as described above.

8. We propose that we involve our respective counsel in the discussion of this issue at a very early stage. We have instructions to brief Adv Rudi van Rooyen (SC) with Adv Adrian Montzinger to assist us in this regard.

9. We look forward to your further advices and kindly request that you acknowledge receipt hereof.

Yours faithfully

MOSTERT & BOSMAN

Per: **PIERRE DU TOIT**